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Supreme Court, U. S.

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Nos. 94-923 and 94-924

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

RUTH O. SHAW, *et al.*,

Appellants,

v.

JAMES B. HUNT, JR., *et al.*,

Appellees,

and

RALPH GINGLES, *et al.*,

Appellees.

JAMES ARTHUR "ART" POPE, *et al.*,

Appellants,

v.

JAMES B. HUNT, JR., *et al.*,

Appellees,

and

RALPH GINGLES, *et al.*,

Appellees.

Appeal from the United States District Court
Eastern District of North Carolina,
Raleigh Division

JOINT APPENDIX
Volume II of II
(pages JA-301 through JA-706)

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JURISDICTIONAL STATEMENTS FILED NOVEMBER 21, 1994
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TESTIMONY OF DR. THOMAS B. HOFELLER

March 28 & 29, 1994

. . . .

[52] Q. Dr. Hofeller, before the break we were looking at the criteria that guided the Redistricting Committee's process. We went through the five criteria. One of the criteria had to do with contiguity, if you recall, and [53] specifically that districts shall consist of contiguous territory. How would you define contiguity?

A. In the general sense, I would say the district is all in one piece, functionally. I would say there would be two qualifications one could look at if one had a detailed map of the district. One could put a pencil down at any point in the district and trace around the boundary, outer boundary of the district, including portions of water that are in the district all the way back to the point of beginning without having to lift the pencil off the page, and without touching or crossing any line or portion of the line previously drawn.

The other test would be to say that a person could walk or drive or swim or row. In essence, travel from any single point in the district to any other point in the district without leaving the district.

Q. If you applied those two tests to Districts 1 and 12 in the current plan in Chapter 7, would those districts be contiguous?

A. No.

. . . .

[67] Q. And what's the basis for your applying geographic compactness approach?

A. As a redistricting expert in this particular area, I would be keying off the geographically compactness requirement of the Gingles threshold test.

Q. What is your understanding of what the Gingles — by the Gingles threshold you are referring to the standard in *Thornburg v. Gingles* in the Supreme Court?

[68] A. First we're talking about geographic compactness of the minority group. We're talking about cohesiveness of the minority group, which means they vote together. Their vote is effective as a group, and we're talking about the fact that there exists racial or bloc voting dilution. There's bloc voting such as it causes the candidates of the minority to be defeated in elections.

Q. That's your understanding of the Gingles compactness threshold?

Q. Yes.

A. My understanding of the compactness threshold comes from its language says geographically compact, meaning close together or in the same area.

Q. Can you cross that geographic compactness threshold in North Carolina in — could you have crossed it in 1991?

A. I think that it would be reasonable, certainly, to say that if the state made an examination of the geography, particularly with regard to black concentrations and particularly in the northeast, that it would be reasonable for them to come to the conclusion that a minority district is required.

* * * *

[70] Q. Would you conclude — would you conclude from that distribution of black population that you created a geographically compact district in that area?

A. I don't think you could ever analyze it as being geographically compact, no.

Q. Can we turn to your overlay for this map, which is in the exhibit book as Map 9B and explain what that represents?

A. That map has District 12 in green overlaid on top of the base map, which is the block group. Geographically, it shows the pathway that the district takes through these block groups picking up the separated concentrations of minority population along the way, with an off-shoot to Winston-Salem. Starts over in Durham and ends up in Gastonia, which is down on the lower left part of the map, which one can barely see. That's given by way of orientation so that the court can see how the district relates to the underlying demographic geography.

Q. With that overlay you still — would you still [71] conclude that the black population of that district is not geographically compact?

A. I don't know how anybody looking at the map could ever conclude the population is geographically compact.

Q. Could I ask you to make the same analysis for Congressional District 1 in the current plan, Chapter 7?

A. Yes.

Q. Referring you to Maps 7A, which we looked at earlier, and 8, with the overlay and could you make the same analysis in terms of the compactness of the black populations for District 1?

A. Well, again, although the underlying census geography shows a large number of block groups which are heavily black, they are scattered all over the eastern portion of the state, with the exception of the northeast, where there's a large contiguous concentration of black residences.

And I think as you overlay the green overlay of District 1, you can see how District 1 has wandered around the eastern part of North Carolina with tunnels and off-shoots in many different directions, and even retracing

its path. First go south, then north, up to Fayette. I can't reach a conclusion from looking at this map and shape of the district. If that's a district intended to identify a geographically compact grouping of [72] blacks into one district, it certainly hasn't been successful in proving they are compact. If anything, it's more scattered than District 12.

Q. Mr. Hofeller, you made mention of Fayette; did you mean Fayetteville?

A. Yes.

Q. Dr. Hofeller, do you have an opinion on the relative geographic compactness of Districts 1 and 12 as compared to other districts around the country you are familiar with?

A. I would say that there are some other districts, particularly in some municipal areas that are as bizarre, certainly this would be as bizarre in shape and compactness among the top ten in the country, and indeed, because of the contiguity by touch and the narrow extended corridors and the by sectioning and tri-sectioning of districts, this will probably be the textbook example for the decade of non-compactness.

* * * *

[73] Q. Dr. Hofeller could you compare — could you explain the significance of Map 11, please.

A. Map 11 is the same district as Map 10, only it's divided into two types of areas, one colored orange and one colored green. And this map is a result of my detailed investigation of the 1st District, in most places a block by block examination, where I looked at the percentage of black population down to a very detailed [74] level. I then attempted to unify all of the black areas and communities within the district into the green areas and I think being rather liberal in terms of con-

necting those black areas through white, essentially white blocks that were low in population or had zero populations, and to show where the black population actually lives within that district.

The area that was then left over was the orange area, which is the predominantly white area of the district. This is supported by another exhibit further down.

Q. Before we get to that exhibit, this map indicates that it represents black communities and white communities and you mentioned black areas and white areas.

What do you mean by black communities and white communities and how did you arrive at that definition?

A. Again, I went down to the block level and I looked at the percentages of the blocks with particular emphasis on blocks of over auto percent and over forty percent black population and even adjoining blocks with the color which I had on my other maps, which is yellow, which is 30 to 40, and tied them together. And any white blocks that were in the middle of that area or which were adjacent to it which were zero in population, there are a lot of blocks that have no people in them, a lot of blocks throughout the state, so in many cases I was able to [75] connect centers of black population to one another to make a larger unit. It's really a detailed distribution.

Now, there was some counties in the northeastern portion of the state where the black population is very highly concentrated. In those areas it became obvious to me it would be probably better to look for the few isolated white communities that were in the areas, so I again tried those together.

Q. Would it be correct to assume Map 11 was constructed using your computer system with data provided by the North Carolina legislature?

Mr. Stein: Objection, leading, your Honor.

Judge Phillips: Overruled.

A. The data that was provided by the North Carolina legislature were the assignments of the blocks to the district. The other data that was used was, of course, the census data from the official census TIGER file and the tabulations from the PL94 data, so those are the three sources of the data that I used. And yes, I did do it on the RNC system.

Judge Phillips: Do I understand what you are saying, in effect, is that the green areas represent at the block level areas in which blacks constitute at least 30 percent of the population and the intervening areas in which there's no population?

[76] The Witness: Not quite, your Honor. The emphasis was on tying together the majority black areas or at least over 40 percent that were contiguous to one another.

Judge Phillips: I thought you said you got down to 30 percent.

The Witness: If the blocks were nearby and adjacent to the black area.

* * * *

[79] Q. Dr. Hofeller, I had asked you why you had undertaken to construct a plan for North Carolina congressional districts that contained two majority minority districts.

A. When the court is looking at a congressional district plan, I think it's always helpful to have something to compare it to. And I didn't find in the record, at least as I went through it at the time that I drew these maps, [80] an example which I thought was suitable to demonstrate how a more narrowly tailored and more compact map could be drawn for the state of North Carolina, which would contain a majority of minority inhabitants.

So, I took the concentration in the northeast portion and essentially made a district connecting it to Durham and also took a concentration in the south central, south portion, so this is by way of a sample plan to demonstrate to the court what is possible; and in a second sense, also to show as you attempt to increase the percentage of black population in minority districts after you hit a certain threshold of population, you start to get districts that are more and more black, lacking in compactness with more indentations. If you carry it out to extreme, you end up with a District 1 type district in the eastern part of the state.

Q. Dr. Hofeller, am I correct in assuming that the map that you described that you drew is Map 3 at Tab 3 that's come to be known as Shaw 3 and the same map is reproduced in large scale beside you?

A. Yes.

Q. Could you explain in summary what Shaw III does?

A. Well, in summary, it creates two minority districts; one located in the northeastern portion of the state, which is the location of the very obvious concentration of [81] black inhabitants, and then it created another district which is a combination of the black minority and the Native American minority, which goes from Fayetteville and Robeson County across the southern part of the state and into Charlotte in Mecklenburg County.

After I had drawn those districts, I found out, much to my pleasure, that you could create a rather coherent 2nd District, which would be the northern coastal district, and the reason why it's got a little oddly shaped in terms of Wayne County is that the incumbent lives in Wayne County, so as opposed to Shaw II, which was the previous map in the book, a little bow to the incumbent stretches the map a little more out of shape in terms of compactness.

I then built District 7 in the south part of the state along the coast and inland. Then, as is common in redistricting practice, I started out at the other corner of the state, built a District 12 in the far west, and 11. I then constructed District 5 or 4 using all of Wake County, Raleigh, and the remaining portion of Durham and the portion of Granville, which is at the southern end, and found I was a few people short, so I had to go into Orange to pick up the additional population. Then District 5 was formed of the remaining part of the central eastern part of the state. 6 was formed using the left [82] over from Alamance County and all of Guilford County and Randolph County and needed a little more, so it went over into Davidson. I next formed 8 and balanced it up with 11 and that left 9 and 10, so it's an attempt to create a plan that makes some sense and has reasonable compactness and yet creates minority districts within the state.

Judge Phillips: Could I ask, Doctor, looking at your District 1, how close you come to point contiguity on the southwestern-most extension?

The Witness: You mean in Lenoir County, your Honor?

Judge Phillips: I'm not sure.

The Witness: On the south part?

Judge Phillips: The southwestern corner of the district, as I see it, is a finger that runs down, has several fingers sticking off. I wondered how — why those would be, or is it that precise?

The Witness: Those, I believe, if my memory serves correct, are whole precinct units. They are considerably larger than blocks.

Judge Phillips: There's no way to tell from this how wide they actually are?

The Witness: No, if you Honor — if the court wanted that information, I could produce it. I can say to you it's nowhere approaching the slenderness of the [83] corridors through which the present plan does.

By Mr. Hess:

Q. Does either of the majority minority districts you created reflect any element of point or double crossover contiguity?

A. No.

Q. Do any of the other districts in Shaw III, I think, either point or crossover contiguity?

A. No.

A. Dr. Hofeller, are you maintainng that if you were North Carolina's redistricting expert, you would conclude the Voting Rights Act requires the creation — the creation of those two majority minority districts?

Mr. Stein: Objection.

Judge Phillips: Overruled.

A. Well, from the beginning I would be making that determination, I would be recommending what could possibly be made. I would have to repeat the answer that I gave previously. That is, certainly the State would be within the bounds of reason, well within the bounds of reason, to conclude that the 1st District may trigger the compactness or the geographic compactness criteria of the Voting Rights Act and certainly 3 might come close, I think it's a little less certain, but again, might be within the bounds of reason. I would certinaly tell them to look at [84] it very carefully and make the decision with a lot of deliberation.

Q. Dr. Hofeller, since geographic compactness is an issue in this case, I would like to follow up on the court's question about the little squiggles on your majority minority districts.

Could you explain, for both of the districts, your Districts 1 and 3, why you have those odd shapes attached to the rest of the districts?

A. In the case of the 1st District, the extensions around the perimeter of the district are extensions out to pick up nearby black communities, particularly in Lenoir . . .

* * * *

[86] Q. How was this map produced? What sort of data did you use to develop it?

A. Again, it was the data provided by the Census Bureau with the outlines of the districts provided by the State. I have produced it on the RNC system. If I move along to —

Mr. Stein: I would like to note the same objection made here as to his characterization of white and black neighborhoods.

* * * *

[92] Judge Phillips: Could I ask one further question for general clarification of your testimony. What marks the boundaries of this district, than the others where jurisdictional lines are, not what marks the boundary. There are some portions of the boundary of the district and of all the districts, as I understood the testimony, which do not follow any jurisdictional boundary.

The Witness: Your Honor, I would have to say a major portion of the boundaries of the minority districts do not follow jurisdictional boundaries, and therefore, the districts which adjoin them, that is right, non-minority districts.

Judge Phillips: What does constitute the boundary where there's not a jurisdictional boundary?

The Witness: I would have to say, for the most part, it's a precinct boundary.

Judge Phillips: That's a jurisdictional matter.

The Witness: It's a voting district. And then —

Judge Phillips: If I include in my description of jurisdictional boundaries precinct boundaries as well as county, are there still portions of the boundary which are not defined by any jurisdictional?

[93] The Witness: Yes, Your Honor.

Judge Phillips: What are they?

The Witness: They are blocks, census blocks.

Judge Phillips: Is it possible, notwithstanding they are not jurisdictional boundaries, for a surveyor to go out, referring to some public document, and run a line and tell a person whether that person lives within a particular district?

The Witness: Yes, your Honor.

* * * *

[98] Q. Dr. Hofeller, do you have an opinion on whether with regard to precincts splits whether white precincts were created any differently from black precincts?

A. My in-depth examination of this district leads me there were two type of splits, one was for corridors which essentially splits the district from one concentration to another, and the second type of precinct splits were to reach out from black precincts to adjoining, less black precincts, or white precincts, to take off blocks which had high concentrations of black voters. So, in essence, those splits were done to unite, to some degree, the black community within that city and the splits

through the corridors were not done for any other reason but transportation. The width of those corridors becomes very important.

Q. Why is that, Dr. Hofeller?

A. Well, if I were constructing a minority district such as this, and as I watched other people construct them in all my time in redistricting, the way this is usually done is one goes to one's information system, whatever it is, and identifies the concentrations of black voters or inhabitants either by VTD or voting precinct in this case [99] or in many other states they use block groups of census tracts and one uses the system to put all of those concentrations into the district.

Now, two things may happen. One, you then may have more population than the district needs to be a complete district, and you have a problem because you haven't connected those concentrations anyway, so you have to cast off some of those concentrations in order to make corridors through non-minority areas to connect the various neighborhoods.

On the other hand, you may find that after you assigned all of the minority neighborhoods or concentrations to the district, you don't have enough population so you have two problems. You have to get more people in order to meet the one-person, one-vote rule and you have to connect these dispersed centers of population.

If the corridors through which you travel get too wide, the population of them grows and that dilutes the district, so the only way that this district could have been constructed was by extremely careful attention to the numbers of people in the connecting blocks in comparison to the size of the black neighborhoods. And that would have, indeed, become the overriding criteria in terms of how you mechanically went about drawing this district. Because if you make those corridors any wider than black [100] precincts or portions of black precincts

have to fall off the black concentrations, the percentage drops down, and soon you are not at the level for a district as a whole that you want.

Q. Based on your analysis of this pattern of precinct splits in District 12, do you have an opinion on whether black precincts and white precincts were treated differently?

A. Yes.

Q. What is that opinion?

A. I think, for the most part, white precincts were used as corridors and black precincts were combined together. Indeed, that would be logical in terms of the goal of creating a minority district.

Q. Dr. Hofeller, let me turn you now to your Maps 18 and 19 at Tabs 18 and 19. Can you explain to the court what those maps represent?

A. Map 18 is a map of the portion — a portion of Forsyth County, the Winston-Salem area. The light blue lines, or the very light lines, represent the boundaries of the block groups in that area, and the very heavily-shaded black lines are the boundaries of the districts in the present plan, Chapter 7. And the purpose of this map is to show how the highly black block groups in Winston-Salem were fractured by the district boundary [101] in the building of the 12th District, and were divided between the 5th District and the 12th District.

My attention was called to this as I was doing a detailed study of the district, in going through it on a block-by-block level, and one of the most bizarre features of the plan is the extrusion from Mecklenburg into Gastonia, extremely narrow corridor to pick up a black population there, and I said, why would the designers of this plan have fractured a rather large community in Winston-Salem and gone into Gastonville (sic) when I

believe there are enough minority residences on the periphery of the district in District 5.

So, if you unified, unfractured the community in Winston-Salem, you would not have to extend into Gaston County at all. And so I did a little trial, which these two maps demonstrate, to show, indeed, if you united the black community in Winston-Salem. There's enough population there to offset the population in Gaston County and you will not lose the percentage of black population.

Q. Do you have an example of your trial map?

A. The trial map is essentially Map 19. Map 19 is a precinct map because the state's plan is ordered along precinct lines, and I have filled out the rest of the black precincts in Winston-Salem, both going out to catch more black precincts, and dropping off in the eastern [102] portion of the county, three majority white precincts less than 20 percent at the same time. And this exchange of population for these three precincts and Gaston County for this black community, in reuniting this black community into one district allows the withdrawal of the district from Gaston County.

Q. Dr. Hofeller, what's the significance of that alternative configuration?

A. In my belief, it represents an example of a more narrowly tailored solution to the formation of this district than the alternative taken by the State.

* * * *

[104] Q. How do you mean?

A. Well, I know there's an anecdote says if you open your car doors and drive down the length of I-85, you will [105] kill half the people in the district. Obviously, you won't kill any people in the district, and if you drive down I-85 from the western end of the district in Gasto-

nia to Durham, indeed much of the time you will be outside of the district.

I studied the pattern along the freeway I-85 and found that if you went from the west end of the district to the east end of the district, you would cross in and out of the district 21 times; whereas, if you went from the east end to the west end, you would cross in and out of the district 17 times. So, as it turns out, sometimes what side of the division of the interstate you are on determines whether or not you are in the district, and sometimes that refers at some point, and there are even a couple of points where you wouldn't be in the district unless you were in the correct lane, going in the right direction. So it actually divides one side of the interstate.

* * * *

[109] Q. Dr. Hofeller, would it be — do you have an opinion on the relative stability of precinct lines versus other jurisdictional lines, such as county lines and municipal boundaries?

A. I would say that in terms of stability, county lines are very stable. In many areas a lot of county subdivisions are stable. Of course, municipal boundaries are subject annexation so where annexation would occur, the lines may change and, indeed, some precincts may roll out and shift with those particular changes. But it's a boundary which could change at any time, even within a city or county or any county district.

Q. And Dr. Hofeller, can we turn now to your Tab 20, that's 20A and B. Could I ask you to explain it to the court, the significance of those maps.

A. Maybe we could project that map? Map 20A and 20B are enlargements of Gaston County. The boundary lines which are on the map are the actual census blocks which comprise the area to which the blue shaded dis-

trict passes, that's the present planned District 12 on Map 20A. Exits Mecklenburg County and travels westward toward Gastonia. That particular map shows the populations of each one of [110] the blocks, and it's clear to see how the drafter of this plan has attempted to trace the line of connection between Mecklenburg and Gastonia through the blocks that have the lowest population, what we might call in redistricting, the point of least resistance.

They goofed in a few places, but I think I could attribute that to just not seeing it or highways. It shows the district passing through many blocks with low population, maybe along the interstate highway.

Q. What's the significance of passing through blocks with little or no population?

A. When you make narrow tunnels like this, it's evident you are going from one place you want in the district and have a significant impact on the district to another place that you want to have a significant impact on the district population-wise, but you don't want the tunnel to have any impact on the district, so you've deliberately minimized its population.

Q. Could one assume from these two maps that the line that you've illustrated split precincts?

A. Not from this map. That was shown in the map we covered previously, and this is the same area, and I know from my examination, and it's clear from that map this is the area of Gaston County which is on Map 16 —

Judge Phillips: Haven't we got that pretty well [111] settled, the precinct split throughout this?

Q. Well, let me ask one final question about precincts. Dr. Hofeller, do you have an opinion on how the precincts splits, as you have been describing, measure with the stated criteria to minimize precinct splits as we discussed earlier?

A. It appears to me, from my detailed examination of the current districts, the precincts were used as the basic building block of the plan, but whenever it was politically expedient for any other goal, particularly in building the minority districts to do so, the precincts were split almost at will. And, indeed, many, many more precincts were split in this plan than would be necessary for any other purpose except to build a district with one characteristic.

* * * *

[122] Q. Given your nation-wide redistricting experience, have you had occasion to compare the compactness of the current congressional plan with other states?

A. There are perimeter circle and circumscribing circle measurements that I have seen and indeed, these are among the lowest. I might add here, though, that even in terms of compactness measurements, when we consider compactness and we look at compactness when you are evaluating a plan, lack of compactness is a red flag, so to speak. It's an indication that if you're investigating the nature of districts, that you should perhaps look a little harder at the districts that are non-compact and try and ascertain why they were drawn the way they were drawn.

* * * *

[124] Q. Dr. Hofeller, do the maps and data in your investigation of North Carolina's congressional plan lead you to any conclusions?

[125] Mr. Speas: Objection.

Mr. Stein: Objection.

Judge Phillips: Sustained.

Q. Dr. Hofeller, I'd like to ask you to summarize for the court the significance of the maps and data you presented here today.

Mr. Speas: Objection.

Mr. Stein: Objection.

Judge Phillips: I think we have had his conclusion stated several times, Mr. Hess, in the course of his testimony to this point, but in the interest of concluding it, let's let him answer what you asked him as far as he can understand it.

Q. Do you understand the question, Dr. Hofeller?

A. I believe I do. First of all — and in summary, I would say number one, the minority districts that are created in the current plan are not geographically compact or are not comprised of geographically compact minority concentrations.

Two, that the minority districts in the current plan presented by the themselves would not support a Section 2 geographic compact finding. At least I would not recommend that they would to somebody if I were advising them.

Three, that this — there exists a more narrowly [126] tailored or more compact solution for the minority districts in North Carolina which is more in line with traditional redistricting criteria.

Three, or four I'm sorry, that the state of North Carolina, at least the committee adopting a criteria for the creation of districts, really had no independent policy of its own. It was just adopting operationally, the federal policy which it would have had to follow anyway.

I guess, lastly, that the shapes and configurations of the North Carolina districts will probably be the textbook example of redistricting in terms of bizarre districts and examples of perhaps disputes over the shape and nature of the districts.

Mr. Hess: Thank you, Doctor, I have no further questions at this time.

Judge Phillips: Mr. Everett, do you have direct examination for this witness?

DIRECT EXAMINATION

Mr. Everett: One or two questions.

By Mr. Everett:

Q. In connection with your last conclusion, your statement of conclusions, what conclusion do you have as to the extent to which white and black populations are segregated from each other by the districts that have been [127] adopted?

Mr. Speas: Objection.

Mr. Stein: Objection.

Judge Phillips: Sustained.

Q. Would you state what conclusion you formed as to the separation in terms of race in the plans that are currently effective in North Carolina?

Mr. Speas: Objection.

Mr. Stein: Objection.

Judge Phillips: Overruled.

A. I think I could best answer that by stating that everything that I have looked at with regard to the districts that have been formed leads me to the conclusion that the overriding criteria which was used in the creation of the minority districts was the black population percentage and was race, and that that was the purpose for which the districts were drawn. And it was the purpose for which the plans out of which they were generated, the plan out of which Chapter 7 was generated, was drawn. And it's very difficult for me to see, from the shape of the districts and looking at the block by block configurations, that there would be any other reason.

* * * *

[139] Q. Let me ask you specific questions about it. Do you concur the purpose of redistricting is to provide fair and effective representation for voters?

A. Yes.

Q. Do you concur that one-person, one-vote requirements and racial fairness requirements are critical to providing fair and effective representation?

A. I think within the bounds of the law, yes.

Q. Do you still subscribe to the view that some — do you still acknowledge some scholars don't place much value on geographic compactness and redistricting?

A. Some, yes.

Q. And in this particular page, don't you quote a professor Kane, who describes geographic compactness "out-dated, irrelevant or even a positive nuisance."

A. The Dr. Kane who was the Democratic consultant for the Burton gerrymander, yes, I don't subscribe necessarily to his viewpoint, no.

Q. But then let me ask you about Dr. Kane. I don't believe you are employed by university, are you?

A. No.

Q. Dr. Kane is, isn't he?

A. Yes.

[140] Q. Which university?

A. I believe right now he's at Berkeley.

Q. A respected institution, I believe?

A. Certainly a highly ranked institution.

Q. Is he tenured there?

A. I don't know. I'm not sure tenure makes his views correct.

Q. Dr. Hofeller, do you know what the criteria of the University of Berkeley applies in deciding to award tenure?

A. I image rather stringent.

Q. Don't you think one of them is scholarship?

A. Yes.

Q. Dr. Kane's been at Berkeley a long time, hasn't he?

A. I don't know exactly when he went there. I think he's been there through this redistricting cycle. He was at Cal-Tech before.

Q. Dr. Hofeller, in your article which you co-author, don't you express the view, "In the modern age, geographic compactness is not as important as it once was"?

A. To some extent.

Q. I'll refer you to page 1160 that of that article, Doctor, and ask you whether on page 1160 you say that it has less strength than it used to?

A. I'm sorry, could you tell me what paragraph that's [141] in?

Q. It's in the first, beginning paragraph, Dr. Hofeller. "This argument was perhaps especially significant in the past, but loses some of its strength in an age of telephone, computers, superhighways and airplanes."

A. I'm sorry, I'm just confused. I don't see it.

Q. Page 1160, first — beginning paragraph, midway through the paragraph, this argument was perhaps especially significant. See that?

A. Yes, I see it now. Thank you very much.

Q. And in that sentence doesn't it state that geographic compactness is less important because of superhighways and other means of transportation?

A. I think in my conversations with Professor Grofman and Professor Niemi. Since this article was written, I could fairly assume if we had anticipated the kind of compactness abuses that have been perpetrated in the 1990 cycle that we perhaps would have phrased this somewhat differently.

Q. Judge Phillips: Let's take a 15 minute recess at this point.

(Recess taken.)

By Mr. Speas:

Q. Dr. Hofeller, would you agree that the value or one of the values of geographic compactness is allowing [142] members of congress, or elected representatives rather, to keep in touch with their constituents?

A. Yes, that would make sense.

Q. Would you agree that geographic compactness is less important when the elected representative is full-time representative than it is when the representative is only a part-time representative?

A. Are you talking about at the state level or congressional level?

Q. Actually, I'm comparing state house/senate members with congressmen.

A. I don't think you can really compare state legislative districts to congressional districts. Congressional districts are very, very large and take much more time to get around.

Q. But you would agree that if the elected representative is full time, geographic compactness is less important, wouldn't you?

A. It depends on the degree.

Q. Would you agree that when the elected representative has a relatively large staff and budget, that geographic compactness is less important?

A. If that budget is used to staff offices which are about the district. However, I think there's probably some need for the legislator himself to visit the [143] district, too.

Q. Dr. Hofeller, I would assume that geographic — well let me rephrase the question.

You said in this article that geographic compactness is less important in light of modern transportation facilities, correct?

A. That's what the article states, yes.

* * * *

[152] Q. Based on your experience, Dr. Hofeller, is it true that urban voters have common interests and concerns that affect the role of a congressman or responsibilities of a congressman?

A. Among many other concerns, yes.

Q. Would it be appropriate, based on your experience, for a state to draw a district that created a largely rural district — that was not a good question — but would it be appropriate for the state to draw a rural district; yes or no?

A. Yes. Again, it depends on the type of rural district.

Q. Would it be appropriate for a state to draw a district where relatively poor citizens are grouped together, yes or no?

A. Again, yes, but it depends on the circumstances.

[153] Q. Okay. And would it be true, Dr. Hofeller, that whether the district is urban or rural is, as you state in

your article, not determined merely as a side effect of a compactness measure?

A. I'm sorry, would you repeat that question again for me.

Q. Would it be true, as stated in your article, that whether a district is urban or rural cannot be determined merely as a side effect of a compactness measure?

A. Yes. I think you if you look at the shape of the district, it's not possible to tell what the demographic shape of the district is, you have to go farther than just the shape.

Q. Your compactness issues tell us whether or not whether — nothing about whether the first is a relatively rural district or 12 is a relatively urban district?

A. No, not at all.

* * * *

[163] Q. Let me — you spent a good deal of time on direct examination today talking about the series of maps that you had that go from Mecklenburg west into Gaston County. Could you describe the geography of that region and the nature of it in terms of employment and whether it's rural or small towns or cities or suburb and/or what?

A. You are talking about the current 12th?

[164] Q. I'm talking about Gaston County, North Carolina?

A. Certainly my impression from looking at the maps and configurations of the streets would say that it's either suburb and/or an older city, surrounded by a suburban area. It's residential in nature.

Q. And are you describing the whole area from Gastonia to Charlotte?

A. Yes.

Q. And do you know what the nature of employers are in that area; what sort of employment there is?

A. Not specifically, no.

Q. Do you know with respect to your Shaw II or Shaw III, the percent of the population in the district that includes Charlotte, the percent of that population which would be described as urban?

A. The percent of the district?

Q. Yes.

A. I can't quote it off the top of my head but it's readily ascertainable from the exhibits.

Q. Well, is that more or less urban than the present District 12?

A. The portion in Mecklenburg?

Q. No, the district.

A. I would have to say it's probably less urban.

Q. Have you traveled in that portion of the state from [165] Charlotte down towards Fayetteville?

A. No.

Q. Of course, the legislators who are making the decisions about which parts of the state would be in which districts were collectively familiar with all parts of the state; were they not?

A. Collectively familiar with all parts of the state?

Q. Yes.

A. I would hope so, some would know about one part, others would know about another part.

Q. Some would know about all of them, wouldn't they?

A. My experience in redistricting has been that many more feel they know about it than actually do.

Q. Now, let me ask you about a particular district. When you drew Shaw II, it ended up that David Price, who lives in Orange County, did not live in and his district included Wake County and some other areas was not connected to Wake County; is that right?

A. The residence — his residence was about six blocks outside of District 4. I might add here, too, I think it would be important to clarify at this point that the Shaw III plan is not offered or presumed to even be offered as any sort of remedy. Its main function here is to demonstrate what sort of minority districts could be drawn and what sense could be made of the territory out of them.

[166] I presume if, for some reason, the districts in Chapter 7 were no longer valid, probably the legislature would redraw the districts, and I would feel confident the legislature would watch out for the Democratic interests fairly well.

Q. Now, following up on that, you have appeared as a witness both for plaintiffs and defendants; have you not, in Section 2 cases where a current plan is being attacked for failure to afford equal opportunities to a minority community to elect representatives to their insurance of their choice?

A. I'm trying to think where I might have been — yes, I have, yes.

Q. And typically in a Section 2 case, a sample plan of the sort you're describing here is offered to show that it is indeed possible to, assuming the other two threshold of measures in the Gingles test are met, but it is possible to draw a geographically compact district which includes a majority of the minority who's seeking relief, just as a

plan similar to the one that you have here as Shaw III; isn't that so?

A. If I interpret your question correctly, and tell me if I have it wrong, what you are saying is if you were mounting a suit — an action against an existing plan because it didn't have enough minority districts you think [167] it violated Section 2, you would offer a proof that the Gingles thresholds were crossed, and part of offering that proof is to say here's how you would do it.

I think the important consideration here is to understand that the proof and crossing the threshold, as it were, gives you a variance from normal redistricting practices, but it may not give you the license to pick up that variance and take it to another part of the state and draw a district which would not make that proof, for political or racial reasons. You would sort of have to dance with the girl that brung you in that case.

Q. Well, I would ask you to respond to my question, it's getting late in the day. My question now is, it is the usual practice then, if the court finds a violation, to then turn it over to the districting authorities, in the state here, it would be the legislature, and with the instruction that they must then comply with the law; is that not right?

A. I've seen sometimes where the court has directed the legislature. I have seen some situations where the court has drawn the plan themselves. I've seen some situations where the court has drawn a plan said, if you did, the legislature don't act, here's what you get. That's a good ploy, so I think, yes, sometimes.

Q. So the compact Gingles requirement, geographically [168] compact Gingles requirement that's shown is not necessarily the plan that ends up as being adopted in response to a finding of a violation?

Mr. Everett: Objection.

Q. Is that not true?

Judge Phillips: Overruled.

A. I don't think that the compact district that may have been presented in court would end up being the final district, but again, I don't think that you pick up that redistricting proof and move it to an entirely different portion of the state with entirely different circumstances and say it was required — that district was required by Section 2.

* * * *

[173] Q. Dr. Hofeller, you have testified here today with some passion about the need for compactness in districting. I would like to ask you whether you have not, in the 1990's election cycle, appeared in a federal court and given the following testimony: I believe the compactness should fall before the criteria to create districts for minorities where they have an equal opportunity to elect candidates of their choice.

[174] A. I know that statement, yes.

Q. That was in the Florida Degrand case?

A. Yes.

Q. In that case, you had proposed some — drawn some districts and testified about the districts before the retired federal district court judge who was serving as the referee in that case?

A. Yes. Again, I also testified in that case that if you could draw less compact district rather than a more compact district, that it would be desirable, and also it should be noted that the Florida situation is somewhat different from the situation in North Carolina where the only way you could ever hope to draw such a district would be by lack of compactness.

I would also like to clarify one thing. You are saying I'm testifying with passion about compactness. Again, I think we have to separate the issue of geographic compactness in terms of a Section 5 threshold from district compactness on the boundary of the district.

Q. Well, you also testified and you put some charts in about all these various mathematical measures of compactness; have you not, in this case?

A. Yes.

Q. In that Florida case you were asked about some compactness measures which indicated a district or so that [175] you have drawn there, scored badly on a compactness measure; isn't that right?

A. That's true.

Q. Good.

A. Again, that was the only district that could be drawn.

Q. Did you not testify in that case, "I don't think that measurements and compactness are a reason for denying minorities their rights to have districts where they have an opportunity to elect candidates they want of choice"?

A. Yes.

[189] Q. On cross-examination yesterday, there were several questions about the residence, your knowledge of the residence of Democratic incumbents at the time you drew the Shaw II plan.

At the time, did you have knowledge or information about the residence of those Democratic incumbents?

A. I did not.

Q. Why didn't you have that information?

A. I just didn't have the information in my system and it wasn't available to me at that time.

Q. So when Shaw III was drawn with, I believe you testified three Democratic incumbents in one district, that was not intentional?

A. Yes. That's why I redrew it. There was never any intention to out-district anybody.

Q. Dr. Hofeller, I believe, in response to one question on cross-examination yesterday, you stated that if you could draw a less compact district rather than a more compact district that would be desirable; was that a misstatement?

A. Yes. I apologize for that statement. I always said [190] more compact districts are desirable in favor of less compact districts.

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TESTIMONY OF DR. TIMOTHY G. O'ROURKE

March 29, 1994

. . . .

[216] Q. Dr. O'Rourke, do you, as a political scientist, have any opinion as to whether any relationship exists between this trend and the availability of computer technology?

A. I think the two are directly related. It's a function of the availability of the greater number of building blocks. That is to say, in an earlier time, the building blocks were larger, typically counties or sub-county regions, but now the building blocks, as Dr. Hofeller pointed out, as we heard again this morning, are census blocks. And to draw a kind of stark contrast, there are 100 counties in North Carolina; we learned this morning there are about 225,000 census blocks, so we have more units of analysis, and the computer technology enables us to utilize the greater number of units of analysis to build a much — it essentially creates [217] opportunities to draw districts in infinitely greater number of ways. So it's the change in the census count along with the change in the computer technology.

Q. Doctor, do the measures of compactness, the mathematical measures, provide an insight into the nature of purpose of the redistricting plan? That is, is it your opinion that, as a political scientist, do they provide any insight?

A. I would say not necessarily. I think there are many reasons for creating districts that are not compact. In some circumstances, non-compact districts will be created by virtue of insurmountability or unavoidable natural barriers. I used to live in Virginia and it was a problem what to do with the counties on the eastern shore; sometimes the lack of compactness is a product of necessity. It surely can be a product of other kinds of factors.

If I could, I did want to finish, add a comment on the Pildes and Niemi study.

Q. Yes, sir.

A. As part of this study, they ranked the 28 least compact congressional districts in the United States. And four of the 28 districts were from North Carolina. The 1st, 5th, 7th and 12th districts. And in fact, PILDES and Niemi said that if — if you add together the two [218] compactness measures of perimeter and dispersion that the North Carolina 12th Congressional District turns out to be in their words "the worst in the nation."

Q. Was there any other way in which North Carolina led the nation? That is, were there any other states that had as many of these 28 as North Carolina had?

A. Yes. Texas had — I can count them if it's important for the record. Texas had six districts on the list. Looks like New York had five or six.

* * * *

[233] Q. Do you believe, from the materials that you were — you did formulate an opinion as to why the legislature drew the districts as it did?

Judge Phillips: The question is on the basis of the information that's been available to him?

Mr. Everett: That's correct, your honor.

Judge Phillips: Whether he has an opinion on that?

Mr. Everett: Yes, sir.

Judge Phillips: He can express that opinion.

The Witness: I think one reason is clear, that one reason for drawing the districts was to comply with the demand made by the Justice Department that the State [234] fashioned two majority minority — or the districts, certainly the 1st and 12th District satisfy that require-

ment. So certainly race is a principal factor accounting for the creation of these districts. Certainly, looking at individual lines there, may be other factors at work.

By Mr. Everett:

Q. Dr. O'Rourke, consistent with — could North Carolina, in your opinion, have drawn more compact majority minority districts?

A. Yes.

Q. And —

A. But let me elaborate on that.

Q. Sure.

A. The term "majority minority" district is subject to debate. In other words, we can ask what is a majority minority district. There are several different levels at which this could be asked. For example, would a district that combined African-Americans and Native Americans so the two groups together comprise a majority of the voting age population or registered voters of such a district, is that what we mean by a majority minority district. Would we mean, alternatively, that we would only count as a majority minority or the district, one in which African-American voters standing alone were [the] majority of [235] voters, would that be such a district. So that would be a factor.

To the extent that we allow the combination of two minority groups to form a majority, that would make it easier to draw a more compact district. Another factor that we would have to take into account would, in effect, change the definition, or at least change the ground for defining a majority minority district from one in which members of a racial minority were, in effect, a majority of the elected, to the sort of district in which a minority candidate might win.

For instance, it's very clear if we looked at Mecklenburg County, for example, combined it with Lincoln County, we come close to a situation in which we have a district with almost the ideal population. That would not be remotely close to a district that had an African-American majority in the voting age population, but it is a district that Harvey Gantt carried in the 1990 Senate race. So, if we looked at a minority district in those terms, as one in which a minority candidate could carry, there again, we could draw very compact districts.

What I'm suggesting to you as a political scientist that the ability to draw compact districts that are, let's say hospitable to minority candidates depend very much on the kind of criteria that we employ. As the kind of [236] criteria that we use are rigidified so that we say the district must have an African-American majority of a certain percent, then the ability to create a compact district is minimized. As you relax that standard, then compactness becomes more achievable.

Q. With respect to the 1st District, do you have an opinion, as a political scientist, and from the data that you have studied, as to the probability of election of an African-American from that district in the 1992 election in terms of the conditions that existed at the time the district was formulated?

A. Well, in all honesty, it's easy to say that it was. I mean, after the fact, to make a prediction. I don't believe that I could have made a sound prediction at the point in time in which the legislature was drafted or planned. But in terms of drafting a plan that led to the election of an African-American candidate, the legislature did that. As I said, there's a balancing that in a — there's a balancing that could go on in the absence of the intrusion of legal rules, and I'm saying as a political scientist, one might give compactness a greater standing if the process were not wholly driven by, let's say,

standards imposed by the Justice Department or expectations about what the law requires.

* * * *

[239] Q. I asked if assuming the state had a compelling interest in forming two majority black districts, do you, in your capacity as political scientist, have an opinion as to whether the 1st and 12th District were narrowly tailored?

A. Yes, I have an opinion. I would say they are not narrowly tailored.

Q. What is the basis for that opinion?

A. The basis of the opinion would be two-fold. I mean, I think this is not a bona fide congressional district plan because of the use of the double cross-over. The [240] checkerboard theory of congressional districting, in my view as a political scientist, that's simply off the scale of options. Setting that very large objection aside, I think the problem is that these districts are simply not done is, they cross through — at least 12th goes through several metropolitan areas. These are not the sorts of districts that one would fashion to promote the principle of cognizability.

Q. And does that principle of cognizability relate in turn to fair representation which is the beginning of our — your direct examination?

A. The damage is two-fold, these are not ideal districts, in effect, for African-American candidates to run in, and the consequences are felt in the adjacent districts in terms of the impact these districts have on those districts that must surround them, or, in effect, cross over them in the case of the 1st and 3rd.

Q. Then would such a plan have an effect in the creation of districts — 1st and 12th have an effect on all

12 districts in the state of North Carolina, all the voters in those districts?

A. Well, you know I honestly don't know the answer to that. There's some ripple effect, but I can't say for certainty the fact the existence of the 1st and 12th inevitably have some effect on every other congressional [241] district.

* * * *

[257] Dr. O'Rourke, do you have plaintiff's Exhibit 202 in [258] front of you?

A. Would you identify that exhibit, please?

Q. That's the article to which you referred, I believe, on direct examination?

A. I do not.

Q. Professor O'Rourke, this one is not numbered, but I would ask you if that's your article to which you referred on direct examination?

A. Yes, it is a paper.

Q. And is this a paper you delivered on March 10 and 12, 1994 to the Western Political Science Association?

A. Yes.

Q. And you are the author of the paper?

A. Yes.

Q. And does this paper — is it fair to say this paper forms the basis for the testimony you have given here today or much of it?

A. Much if it, yes, sir.

Q. In that particular paper, do you address the question of whether or not shape of districts or division of counties affects voter turn-out? And I would refer you to page 21 of that paper.

A. There are — I think the paper looks at two issues. One is how the shape of districts affects turn-out as a percentage of voting age population in congressional [259] districts to the extent that counties are mentioned. The figure with respect to counties relates to roll off, which is the drop in percentage turn-out from presidential level to the congressional level. In other words, what number of voters who participate in the presidential race do not vote at the congressional level.

Q. And in your opinion as a political scientist, Dr. O'Rourke, does the level of turn-out participation in a congressional election to some degree indicate whether the plan provides for fair and effective representation?

A. Certainly would be a measure, and I would want to see the exact measure to make a decision about whether it's appropriate for the use to which it is put.

Q. And in the paper, Exhibit 202, do you report to your colleagues at the Western Political Science Association, that ballot roll off was the sixth highest in Mecklenburg County among the State's counties?

A. Right. That number, I believe, should be the fifth; that's one of the corrections to which Mr. Everett referred.

Q. And in your paper, your colleagues at the Western Political Science meeting, do you report Mecklenburg County is divided among three districts?

A. That's what it says; that should be two.

Q. And I take it by that statement you mean to imply the [260] division of counties somehow causes low voter turn-out, causes roll off.

A. That was a notion that I had but as I looked at that I was not persuaded that the division, per se, of counties connected to roll off.

Q. Have you come to the conclusion that, in fact, there's absolutely no relationship between divided counties and roll off in North Carolina?

A. I have reached no conclusion.

Q. Okay. Let me help you with that. I will show you exhibit which I have marked as Exhibit 437. And I would ask you whether Exhibit 437 is the data upon which you reported to your colleagues at the Western Political Science meeting that the roll off in Mecklenburg County split among three counties was the fifth highest in the state?

A. Yes.

Q. Did you report to your colleagues at the Western Political Science Association meeting that Cumberland County is also split into three districts?

A. No, sir. That's — in part, that's the reason I did not so report. Today I'm not persuaded that splits among counties, per se, is an important variable.

Q. Does Exhibit 437 demonstrate that the roll off in Cumberland County, which is split into three districts, [261] was the third lowest in the state?

A. It would illustrate it to be the fourth lowest.

Q. Does your Exhibit 437 — in fact, more people voted in congressional elections in Cumberland County than voted in the presidential election?

A. Yes.

Q. Does your Exhibit 437 also indicate that there are five other counties split into three districts? And if I can perhaps help you with that, Dr. O'Rourke, looking at the first page of Exhibit 437, near the bottom, you see Rowan County was split into three districts?

A. Yes.

Q. Rowan County then would have the — excuse me — approximately 97 percent of the people in Rowan County who voted for president also voted in the congressional election; is that correct?

A. Yes.

Q. And Rowan County ranks 48th in roll off?

A. I would have to count down to it.

Q. I would advise you that maybe it will assist you, 25 counties listed — excuse me, 50 counties listed on page 1 and 50 on page 2 of Exhibit 437.

If that's true, what would be Rowan County's rank?

A. That would be 48.

Q. And turning to page 2, is it — does it indicate that [262] Iredell County is split into three districts and would be ranked fifth?

A. Yes, sir.

Q. That Forsyth County is split into three districts and is ranked 61st?

A. Yes.

Q. That Guilford County is ranked — split into three counties and ranked 72nd?

A. I assume your counting is correct.

Q. Pender County is split into three districts, and ranked 74?

A. Yes, sir.

Q. And once again, Cumberland County is split into three and ranked 97th. Now, I'd like to take you through one more step in this exhibit, Dr. O'Rourke. Look at the ten counties with the most roll off between the congressional and presidential elections. If I'm

correct, Person, Scotland, Bladen, Chowan, Mecklenburg, Martin, Pope, Tyrrell, Madison and Perquimans?

A. Yes.

Q. How many of those counties are split among three districts; only Mecklenburg?

A. Yes.

Q. How many of those counties are split in two districts?

[263] A. Three.

Q. And the remaining counties are within a single district?

A. (Nodding.)

Q. Now, look at the bottom, the second page. The ten counties with the least roll off between presidential and congressional elections. They would be Richmond, McDowell, Davidson, Cumberland, Robeson, Cabarrus, Wilkes, Columbus, Stokes and Caldwell?

A. Yes.

Q. How many of those counties were divided among three districts?

A. One.

Q. How many of those counties are divided among two districts?

A. Six.

Q. Twice as many counties divided among two counties?

A. Yes.

Q. Is it true, among all those ten counties we just listed, that in each case more people voted in the congressional election than the presidential election?

A. Yes.

Q. Now, based upon Exhibit 437, wouldn't you have to conclude, Dr. O'Rourke, that there's absolutely no relationship between dividing counties and voters [264] participating in congressional elections?

A. Yes. But I think a word of explanation is in order. It appeared to me, based on the review of the data not unlike the one you have just walked us through, that the division of counties per se is less important than the division of geographic communities, as I have previously described it. And, in fact, there was a relationship between the compactness measures of Pedlis and Niemi and both turn-out as a percentage of VAP of cross congressional districts and roll off.

Q. Let's talk about that a little bit. You report that, too, at page 21 of Exhibit 202, don't you?

A. Yes.

Q. You indicated on page 202 and represented to your colleagues, I assume, that the correlation between the Niemi perimeter score and congressional vote in the 12 districts is 6.78?

A. Yes.

Q. Which suggests some correlation?

A. Yes.

Q. Did you report to them that you also examined the relationship between the dispersion score and congressional vote and found no significant relationship?

A. No; there was a relationship, but not significant.

Q. And when you — let me ask the question this way. [265] You testified at your deposition that education is the most important determinant of voter turn-out; do you recall that?

A. On an individual level.

Q. Did you take into account education levels when comparing Niemi perimeter scores with turn-out?

A. No.

Q. You testified at your deposition that income is an important determinant of turn-out; do you recall that?

A. Yes.

Q. Did you take income into account?

A. No.

Q. You testified at your deposition that age is an important determinant of turn-out; did you take that into account?

A. No.

Q. You testified at your deposition that the competitiveness of the race is an important determinant; did you take that into account?

A. No. That, in effect, could be a product of the compactness, or lack thereof, of the districts.

Q. As a political scientist, Doctor, the fact that there is a positive correlation between one of Niemi's perimeter scores and turn-out, given the lack of analysis of these other important factors, provides no basis for you to [266] conclude reasonably that there's a relationship between geographic compactness and turn-out.

A. I disagree. There are other factors.

Q. Have you examined any of those other factors?

A. I mentioned —

Mr. Everett: If he would be allowed to complete his answer.

Q. I'm sorry. Would you like to complete your answer?

A. There were other factors I mentioned on direct, including Niemi's 1986 study, the results of the poll and so these are pieces that are suggested and point in the same direction.

Q. In performing this perimeter score comparison, you did not take into account any of the factors you testified at your deposition are important determinants of turn-out, did you? Yes or no, Dr. O'Rourke?

A. No. With respect to turn-out as percentage of VAP, they would be relevant. With respect to roll off, it's not clear that they would be.

* * * *

TESTIMONY OF GERRY COHEN

March 29, 30 & 31, 1994

. . . .

[289] A. Yes, I saw states that had plans in the 1980's where they used census tracts, which appeared to me to be artificial in the sense they followed no political or election boundaries or county boundaries, and, in fact, divided precincts all over everywhere, and were ununderstandable to me in the terms of how campaigning or election administration would go on in these areas.

I recommended to the legislative leadership that we participate in a program authorized by Congress to obtain precinct boundaries in a much greater part of the state.

Q. Could you explain what this program — first, did the State — or leadership agree the State should participate in this program?

A. Yes, in early 1985, after the most of the litigation in the Gingles case was over, staff recommended to the legislative leadership that we participate in a program known as Public Law 94171. Under that public law, Congress required the Census Bureau to give states census populations based on precincts, the State participated in a joint program and complied with certain Census Bureau criteria, and legislation was based passed in 1985 to provide that the program would take place for all counties with a population of 55,000 or over, and other counties that wished to volunteer.

Q. Do you know why the 55,000 population number was [290] used?

A. Because that was the population of the smallest county in the court order in Gingles, that being Edgecombe, whose population was 56,000.

Q. Okay. If you could explain for the court a little bit about the building blocks that the census used and the State used by participating.

A. The building blocks that were used in developing the census geography for the 1990 census?

Q. Yes.

A. Well, the basic building block or census blocks, which consist of a combination of visible features, such as streets, roads, railroads, power lines, waterways, along with some political features, such as township, municipal and county boundaries as of January 1st, 1990.

Q. And —

Judge Phillips: Could I get one point of clarification that's bothered me throughout this, only remotely concerned with anything. To the extent the census block boundary is not limited by a visible boundary, a street, a highway, stream, what did you say it is bounded by?

The Witness: It can only be a visible feature, there are some visible features they won't use, roads have to be a certain width, for example; but the only features [291] that are not visible that may be used were county, township and municipal boundaries as they existed on January 1st, 1990.

Judge Phillips: So it's either visible boundaries or ascertainable jurisdictional boundaries.

The Witness: Yes, your Honor.

Judge Phillips: To which one can refer for location on the ground, if one were disposed to do it, of a particular census block?

The Witness: Yes, all counties, townships and municipal boundaries have descriptions that are available in some public record at some point in time, yes, sir.

By Ms. Smiley:

Q. And you said that the jurisdictional boundaries used were as of what date?

A. For counties, townships and municipalities, January 1, 1990.

Q. If counties changed any of those lines, what happens to census block?

A. The Census Bureau does annual surveys to keep themselves ready for the census. The survey of January 1st, 1990, was to determine — the census blocks had already been drawn with the visible features in the period '86 to '89. Then after the survey was returned on January 1st, 1990, they added the municipal boundaries and — to [292] finalize those census blocks at that point. Any changes after January 1st, 1990, are not reflected in the 1990 census.

Q. So even today, your census blocks might not — say, a city that has done annexing might not meet the lines?

A. At this point some census boundaries might be former municipal boundaries, but they would be ascertainable by the record in effect on January 1st, 1990.

* * * *

Q. What's the relationship now of the precinct lines and census blocks?

[293] A. As a result of the '85 legislation, the General Assembly required those 48 counties to change their precinct boundaries to follow visible features or municipal or township lines so that when we participated in the Public Law 94171 program, we would be able to participate in those 48 counties in a county-wide basis and have accurate precinct population totals for the 48 counties.

Q. Census blocks would not go across county lines?

A. That's correct. All block numbering is unique within each county, and then within each county, within each census tract.

Q. And is a precinct made up of a number of census blocks?

A. Yes, a precinct is a collection of many dozens or hundreds of census blocks, yes.

Q. Now, talking about the 48 counties where the precinct lines had been conformed with the census.

A. Yes.

Q. Are any of those census blocks divided by the Census Bureau?

A. No. As I explained, that in putting down those city limit lines, they divided census blocks just prior to taking the census. In those 48 counties, the precincts lines followed only census block boundaries, and thus do [294] not divide any census blocks.

Q. What about the other counties? First, I believe there's a group of 21 counties?

A. At the time — the 48 counties encompassed about 80 percent of the state's population. At the time that legislation was passed in '85, I stated in committee that — in the legislative committee, that we would, as we went into the 1990 census; if that didn't appear to be adequate coverage, we would attempt, in building the data base, to assemble census blocks up to precincts in as many additional counties as would appear to be necessary to adopt plans.

So, as we went into 1991, it appeared that there was a lot more interest in developing minority districts than we had envisioned back in 1985. And we went and built these census blocks up into precincts in 21 additional counties as we had time and as that was manageable. And that resulted in the totality of our data base.

* * * *

[295] Q. Did adding the precincts mean you had to divide census blocks?

A. In these 21 counties, there were a number of precinct boundaries that didn't follow census features. Those precinct boundaries have been defined by the county boards of elections. In those cases, in order to put that geography on the census data base, a number of blocks, probably about 100, were divided in putting down the data base for the legislative computer system, yes.

Q. How did you go about dividing them?

A. As had been done in 1984 in Wake and Durham County, there were on-site housing counts made that particular census block, finding the precinct line and counting the number of housing units on each side and apportioning the population of that block accordingly. Although many of the blocks had no people in them.

Q. Now, you got your 48 counties participating and the legislative staff, working 21 counties, building up the precinct level?

A. Yes.

[296] Q. What about the remaining counties?

A. In the remaining counties, the basic building block below the county level was township, which was—geographical and political subdivision of North Carolina.

Q. Did township lines agree with census block lines?

A. Yes, because Census Bureau used township boundaries as census block boundaries under federal law.

Q. One additional piece of information you had put in the data base — what did you do with the old district lines as they related to the new census blocks?

A. Under Section 5 of the Voting Rights Act, one of the recommended requirements of making a preclearance submission was the 1990 census population of the previously existing districts. When we went to find out those boundaries, put them on the new system, in many cases the boundaries of the 1984 State House and State senate districts followed precinct boundaries which were city limits in 1984.

The cities made annexations so they were simply former city limit lines and the 1990 census did not have separate tabulations for those. So we went back with the old municipal corporate maps and many of those city limit lines were still shown on the census map, but they weren't block boundaries. They were shown as city limit lines as features on the maps. So we went back and had people make [297] individual housing counts on both sides of about 100 blocks in seven or eight counties to be able to make our Section 5 submissions. So those blocks were divided in our data base from the beginning.

* * * *

[297] Q. And do you know, in terms of the census blocks, that the legislative staff divided them. Do you know about how many census blocks you divided?

A. Are you talking about in the enacted plan or total?

Q. No, total in your data base.

A. Probably about 250 or so.

Q. Okay. And how many census blocks, approximately, are [298] there in the data base?

A. I believe about 229,000, give or take.

* * * *

[308] Q. All Right. In the redistricting process, whose instructions did you follow? There are 170 legislators. Whose instructions did you follow?

A. I was instructed to follow the instructions of certain designated members of the legislative leadership.

Q. And they were?

A. The Speaker, President Pro Tempore, the three co-chairs of the House Committee, the Chair of the Senate Committee and the Subcommittee Chairs, who were Representative Dan Blue, Senator Henson Barnes, Representatives Toby Fitch, Ed Bohn and Sam Hunt, Senator Dennis Winner, Senator Joe Johnson and Senator Russell Walker.

Q. And collectively, when you talk about the leadership, is that who you are referring to?

A. That was eight people, yes.

* * * *

[312] Q. What was the purpose of the State's submission?

A. Under Section 5 of the Voting Rights Act, the state bears the burden of proof to show the Department of Justice that the factors required under Section 5 have been satisfied. The regulations set out certain criteria and certain things that the State needs to show or may show. And we organized our submission based on the sections and subsections of those regulations to make sure that we had met our burden of proof.

Q. And what is the emphasis of the submission?

A. Race. Because that's the emphasis of Section 5 of the Voting Rights Act.

* * * *

[314] A. The Justice Department had received a number of responses, comments, to our submittal, which are permitted under the Section 5 regulations, the largest of which was made by the American Civil Liberties

Union. This was reply comments that I had drafted to those submissions — to those comments. The Justice Department had invited the State to reply to those comments.

Q. I believe on the front of that exhibit it's — on whose behalf does it say it was prepared?

A. Says on Stipulation Exhibit 25, this memorandum is submitted on behalf of Representative Toby Fitch, Co-Chair of the House Redistricting Committee; Senator Dennis Winner, Chair of the Senate Redistricting Committee; and House Speaker Daniel T. Blue.

Q. Who actually prepared that document?

A. I did.

Q. Did you do that in the course of your duties?

A. Yes. It states on the memorandum, to United States Department of Justice, from Gerry F. Cohen, Director of Legislative Drafting. One of my duties was to reply to the submissions and reply to the comments of the ACLU.

Q. Now, did you, in fact, take that to Speaker Blue or Representative Fitch or Dennis Winner to read before you submitted that to the Department of Justice?

A. Not to my recollection.

[315] Q. Okay. Now, in those documents, what were you attempting to do?

A. I was attempting to refute the comments that had been made by those groups who had opposed our Section 5 preclearance submission.

Q. And can you put those comments in context?

A. Yes. The State was attempting to show, at that point, that its plan with one majority black district satis-

fied the requirements of Section 5 of the Voting Rights Act, which considerations were made on race.

Q. Did you comment on all alternatives that were before the General Assembly at that time that the General Assembly had not acted on?

A. Yes, I did.

Q. Could you put those comments in context?

A. Yes. At the time those comments were made, they were made in the context of plans that we had had before us at that point in time. There were several plans that had two majority black, or two majority minority districts, none of which resembled, in my opinion, that enacted in the General Assembly in 1992.

Q. In those submissions were you critical of the shapes of some of those plans?

A. Yes.

* * * *

[316] Q. Let me see if I can break this down a little easier. Did you — did you criticize the alternative plans before the General Assembly in your submission?

A. Yes.

Q. And beyond the shapes of the districts, are there other reasons for criticizing those districts?

A. That they failed to have commonalities of interest.

Q. Okay. Now, in looking at those alternatives, and looking at the shapes of the minority districts in the enacted plan, what, in your mind, is the difference between the plans that were rejected and the plan that was eventually adopted?

A. The fact that the plans that were enacted were made so with the — to enact two districts, one of which was [317] urban in nature and one of which was rural in

nature, which was not seen in any of the plans we previously analyzed, and which I commented on in my response to the ACLU comments.

Q. In front of you, I believe, there's another exhibit, Stipulation Exhibit 24?

A. Yes, I have that here.

Q. Okay. And could you identify what that is?

A. That is a response that I made to the Justice Department on November 3, 1991, in response to their request for additional information, which they were entitled to make, and did so, under Section 5.

Q. All right. And what does that — specifically, what is that memo about?

A. Says, this memorandum deals with my instructions, notes or memorandum. I received no written instructions, all of my instructions were oral.

And I summarized in there a lot of the instructions that I had received in even enacting the 1991 plan, in the preparation of the 1991 plan to the extent I had responsibility for it.

Q. Here we're talking about Chapter 601, the plan that was rejected?

A. Yes.

* * * *

[318] The Witness: It was Stipulation Exhibit 24.

Q. And could you identify Stipulation Exhibit 9?

A. Stipulation Exhibit 9 is the redistricting criteria for congressional seats adopted by the responsible legislative committees.

Q. And Dr. Hofeller commented on each of these criteria in his testimony. And could you explain for the court these criteria?

A. Yes. Criteria 1 states the congressional districts shall have population as nearly equal in population as practicable, thus either 552386 or 552387; that was the first criteria.

Q. What was the second?

A. Criteria 2, in accordance with the Voting Rights Act, the 14th and 15th Amendments, the voting rights of racial minorities shall not abridged or denied with the formation of congressional districts.

Number 3, as in accordance with 2 U.S.C. 2C, that the districts shall be single member districts and consist of contiguous territory.

Number 4, it is desirable to retain the integrity of [319] precincts. For the purpose of this criterion, a precinct shall mean the voting tabulation districts as demarcated in our redistricting system as of May 1, 1991.

Does not apply in counties where voting tabulation districts are not demarcated in the General Assembly's automated redistricting database on that day.

Q. Gerry, before you continue, could you explain what the point of that criteria is?

A. The point of that criteria was that precinct populations were available in those — in 69 counties, and the integrity of the precincts, using precincts as building blocks would aid voters, candidates, and election officials in actually conducting or voting and campaigning in congressional elections. So to the extent possible in conjunction with the other criteria, it was desirable to use whole precincts.

In the other 31 counties, where they were — precinct boundaries were not in the legislative computer system, we didn't have in front of us, on the computer screen, precinct boundaries. And thus, the criteria didn't suggest, encourage retaining their integrity.

Q. What was the last criteria?

A. Census blocks shall not be divided, except to the extent they were divided in the automated redistricting system database for precinct boundaries, or to show [320] previous districts.

Q. Now, on that last criteria, does that relate to what you were describing to the court, about the building up of information of divided census blocks?

A. Yes. I described to the court previously some census blocks had been divided to show precinct boundaries or to show the boundaries of prior State House and Senate districts which seemed to be required under our Section 5 duties to receive preclearance.

Q. I notice compactness is not a criteria on this.

A. That's correct.

Q. And do you have any views on compactness of the criteria, do you have any views?

Mr. Farr: Objection. I would like clarification as to whether it's his personal views or he's speaking —

Judge Phillips: I think the question could be focused a little bit to make it more helpful.

Q. What was your role with legislature — are you an attorney?

A. Yes.

Q. Did you give them legal advice?

A. Yes.

Q. Were you involved in the development of the criteria?

A. Yes.

[321] Q. And was there discussion about compactness?

A. In the development process?

Q. Yes.

A. Yes.

Q. And in your view, why was compactness not included?

A. Because with the other, especially the first four criteria, to carry those out, with equal population creating majority minority districts, keeping single member districts, having them contiguous, it's very difficult to have districts that were geographically compact. Instead — let me stop at that point answering that question.

* * * *

[331] Q. Did you attend any of the public hearings?

A. I believe there was only one public hearing on the enactment of Chapter 7 in the legislative auditorium. I attended most of that hearing.

Q. Were there any public comments dealing with communities of interest or urban and rural interests?

Mr. Farr: Objection.

Judge Phillips: Overruled.

Q. Yes, there were, there were several. The most notable of which was from Robert Hunter, an attorney from Greensboro, who said one thing he noted in the Peeler Plan was it didn't treat all urban communities alike. He [332] thought all urban communities in the Piedmont crescent area should be included. He mentioned specifically that Forsyth County was left out, and urged the legislature to add Winston-Salem to be the 12th Congressional District.

* * * *

[333] Q. Based on that public hearing, what was your view of what needed to be done to the Peeler Plan?

A. Well, that comment, I think, struck me to be remembered vividly because I think it really drove a lot of what happened in the period shortly thereafter. Because that's at the point where we began to look at the urban and rural nature of the district, really because of those comments at the public hearing. We looked back at the plans and looked at how much was urban and rural in the proposed 1st and 12th districts.

There's a report that can be run on the computer system called place population. Place is the census word for city limits. You can run a report for each congressional district showing the population of each district that's within each city limit.

If you will look at Exhibit — if I can bring to the court's attention Exhibits 406 and 407 of the defendants, Exhibit 406 lists North Carolina's municipal population rank ordered by population, that's prepared by the State data center. Exhibit 407 is a similar publication done directly by the Census Bureau in alphabetical order by city, not rank ordered. It has July 1990 estimates, but basically the same as April 1990.

Q. Did you use those documents?

[334] A. Yes.

Q. And how did you use them?

A. In beginning our analysis after the public hearing, I ran these reports to look at the urban/rural nature of the district as we were attempting to analyze Mr. Hunter's comments about having an urban district. I looked at the populations of the cities in rank order and looked at what I thought, based on my context as having worked in the General Assembly, what members of the legislature would consider urban in a North Carolina context.

I looked at the top 25 cities, which cut off at about 20,000 in Havelock, right between the population of Havelock and Lumberton, was about 20,000. We looked

at that as the criteria. I analyzed these based on that criteria, populations of 20,000 or over, and looked at what urban areas were missing from the 12th District. And that was Winston-Salem and Gastonia.

And over the course of the next several days, I re-worked the Peeler plan to add much of Winston-Salem and Gastonia, primarily the majority black precincts, into the 12th District.

Q. Was the leadership aware that you were using this 20,000 cut off?

Mr. Farr: Objection.

Judge Phillips: Overruled.

[335] A. Yes.

Judge Vorhees: Did you say 20 or 25?

Witness: The top 25 incorporated places, which were the places where with a population of 20,000 or over.

* * * *

[341] Q. Mr. Cohen, you testified yesterday about the genesis of the Peeler plan put on the legislative computer system. Are Maps 418 and 422 maps of the Peeler plan?

A. Yes, those two maps are maps of the Peeler plan.

Q. All right. And does the Peeler plan contain two majority minority districts?

A. Yes, it does.

Q. Where are they located, generally?

A. One of them is located, beginning in Charlotte, up [342] through Statesville, east through Salisbury, and on through Greensboro to Durham, and then several counties north of Durham along the Virginia border.

The second starts in Warren County, runs through much of the eastern part of the state, down to New Bern, Wilmington and Fayetteville.

Q. All right. Without repeating too much of yesterday's testimony, could you indicate, briefly, what were the first major changes you made to the Peeler plan?

A. The first two major changes that I made in the Peeler plan was adding a large portion of Winston-Salem, as I mentioned yesterday, along the goal of adding another urban area as requested by Mr. Robert Hunter, and also making the district more urban.

At the same time, portions of four counties along the Virginia border were removed; Caswell, Person, Granville and Vance.

Q. You explained yesterday using Exhibits 406 and 407, your reference to population?

A. Yes. At that point, we ran a report looking at the population of which cities were in that district, and looked at those tables I was referring to, just before adjournment of the court yesterday, as to which cities were sized to be considered urban in North Carolina context, the largest 25 incorporated places.

[343] And I noticed that approximately 80 percent of the 12th District was in communities, incorporated places of 20,000 or over; whereas, about 80 percent of the population of the 1st District was in places of 20,000 or under. Seemed to be co-existent of a suggestion of public hearing the 12th District be urban in nature.

Q. When you used the population statistics in Exhibits 406 and 407, were you just looking at the black population statistics?

A. No, I wasn't looking at them at all. I was looking at the report of the total population of the 12th and 1st

District — that were in the 1st and 12th Districts, not at the racial classification of any of the populations.

Q. All right. Did this urban/rural concept guide your efforts, your later efforts on the plan?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. Yes, it was a central part of the plans for finishing the redistricting plan from that point forward.

Q. And did you discuss this urban/rural concept with the leadership?

A. Yes. After noticing it myself, I did report that finding in discussion with the leadership.

Q. In your own view, are there similarities or commonalities of interest in the urban areas of the 12th?

[344] Mr. Farr: Objection.

Judge Phillips: Overruled.

A. Yes. From my knowledge and experience, both from being Director of Bill Drafting, and also from studies that I worked on in 1982 and 1983. I have been staff counsel to a legislative study commission on the North Carolina railroad, where I was required, and did, spend, several weeks traveling along the railroad corridor from Charlotte through Durham, and then onto Goldsboro and Morehead City. And made a lot of observations at that point about the nature of a lot of these counties in this area, especially the urban counties. And I felt then, as I do now, that there are major similarities between the communities, the urban communities and Piedmont urban crescent, all of which are from Durham west are in the 12th District.

Q. Do you have Exhibit 410?

A. Yes, I do.

Q. What is that?

A. Exhibit 410?

Judge Phillips: Could you tell us where that is?

Ms. Smiley: Yes, sir, I'm sorry. It's in a bound defendant's exhibit.

Judge Phillips: Is it an exhibit tab?

[345] Ms. Smiley: Yes, Tab 10. All our numbers are 400's, we didn't have the 400 labels.

The Witness: This is a report on the North Carolina railroad written by the North Carolina Department of Transportation in 1976 as required by the General Assembly.

By Ms. Smiley:

Q. Does it contain a map?

A. Yes, it does. That map is at the end. There are two maps at the end of Exhibit 410; one of the North Carolina railroad and one of other railroads nearby.

Q. Gerry, are you intimately familiar with that railroad track?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. Yes.

Q. Could you briefly tell the court?

A. Well, from my knowledge from reading that report, and under the research I did at the time reading North Carolina history text, that the major urban —

Q. No, Gerry, excuse me. I just want them to know your personal experience.

A. Yes, I'm familiar with the communities around the railroad and along the railroad itself.

Q. Why is that?

[346] A. As I explained, in 1982 I spent several weeks studying the railroad corridor, location of the railroad, in the communities nearby.

Q. Did you walk along those tracks?

A. For probably a number of miles of it, yes, and I drove the remainder.

Q. Would you look at the 1st District. From your experience in the legislature, are there common interests in the 1st District?

A. Yes. As I discussed yesterday, there are some exhibits here in that same volume, Tab 9.

Exhibit 409 is a map resulting from legislative enactment creating a depressed counties jobs tax credit where the legislature, back in 1986 or '87 enacted a formula to target jobs credits based on — I believe the factors were poverty, unemployment.

If you look at Exhibit 409 up in 1992, for instance, that targeted credit, you see that many of the counties in the 1st District, the map of the counties in the north-east and southeast are, in fact, the counties of the 1st District. That as the legislature looked at these common interests, there's a commonality among those counties: rural, poverty, high levels of unemployment, poor housing.

* * * *

[347] Q. All right. Gerry — Mr. Cohen, as you worked on redistricting in the '90's, were you familiar with the existing districts in the 1980's of the congressional districts?

A. Yes, I was familiar with them.

Q. Did you know where the incumbents lived?

A. Yes, I do. And did.

Q. And did you give any consideration to where the incumbents lived or what might be called the core of their districts?

A. Yes. One of the factors used in my drawing of the plan was to have each incumbent member of Congress be in a separate district from each other, no pairing. In the second ones, to the extent possible, while creating two [348] minority districts and keeping them urban and rural, also to preserve the core of existing districts.

Q. And did you use the same district numbers for incumbents?

A. Yes. The district numbers in Chapter 7 are the same district numbers that each incumbent Congressman had in the prior decade, with the exception, of course, of the 12th District, which was an open seat.

Q. There's been some discussion of double cross-overs. In your view, what was the purpose of using double cross-overs?

A. The purpose of using double cross-overs was after — at the same time the districts were being constructed to create two majority black districts, one was urban and one was rural, in order to not pair incumbents. The 3rd District has a cross-over point where some of the district is contiguous with some to the east and some to the west of the corridor of the 1st District, shown in red of the upper map there. The 3rd District is in yellow.

Judge Phillips: What's that exhibit no. to which you are referring?

The Witness: The top map number.

Judge Vorhees: You may step down.

The Witness: Thank you, your Honor.

Corresponds to Map One Exhibit 301. The 3rd [349] District is both to the east and west of the path of the 1st District. It crosses over at that point, largely so that

Congressman Martin Lancaster, Tim Valentine of the — Lancaster of the 3rd District, Tim Valentine of the 2nd, Charlie Rose of the 7th, and Bill Hefner of the 8th would all be in separate districts, each of which maintained as much as possible of the areas of their previous districts so that they would have the greatest chance of being reelected, other things being equal.

By Ms. Smiley:

Q. All right. Going back to the Peeler plan, the Peeler map, I want to work our way through each of the districts, trying to give the court a flavor for some of the things that you were doing.

A. Yes.

Q. What did you do with the counties along the Virginia border?

A. Yes. As I explained from the Peeler plan, Caswell, Granville, Person and Vance County were removed from the 12th District. Caswell, Granville and Person, large parts of those counties were placed in the 5th District so as to assist the 5th District Congressman Steve Neal. And Vance County was placed in the 1st Congressional District, largely to assist Eva Clayton in a potential Democratic primary.

[350] Q. Okay. What happened initially to Winston-Salem and Forsyth County?

A. The initial change made between the Peeler plan and actual enactment of Chapter 7 had a larger portion of Winston-Salem in the 12th than in the enacted plan.

Q. All right. And what happened to Gastonia?

A. Well, as we continued to reflect on the public hearing comments and on the urban percentage, Gaston county is also part of the Piedmont urban crescent and was the only city of 20,000 or over in the urban Pied-

mont, urban crescent from Durham west that was not in the 12th District at that point.

It also had a heavy black concentration in Gastonia, so the area of Gastonia the — Gaston County that you can see on Exhibit 302 was added to the 12th District and a corresponding amount of population was removed from the 12th District from Forsyth County.

Q. And did that make the district more or less urban?

A. It was probably about a wash on balance.

* * * *

[351] Q. Could you tell the court what was in your mind, what you were doing when you made the narrow corridor between Charlotte and Gastonia?

A. Yes. The initial purpose of that change was two-fold, was to add another urban area in the Piedmont crescent to the 12th Congressional District, as well as to assist Steve Neal as part of realigning the 5th District from east to west.

Q. The question here is limited to why you used a narrow corridor; what was in your mind?

A. One of the goals was to keep the 12th District in 80 percent or more of communities, and over in the area where it narrows down on Exhibit 302, in the west part of Charlotte, is where you leave the city limits of Charlotte, and it doesn't widen up again until the map is inside the city limits of Gastonia. So the area is left [352] very narrow between there so as to not include rural population, as to well not include any population as to substance.

Q. Is that true of some of the other corridors between the urban areas in the 12th?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. Yes. That is also true of the area in Davidson County from Thomasville to Winston-Salem.

Q. What did the Peeler plan do with maps and what was the effect of it?

A. Let me finish the answer to the previous question. It's also true, north of Charlotte, from Charlotte on towards Statesville. What the Peeler plan did to Kannapolis, comparing it with some of the plans we had seen the previous fall, the Balmer 8.1 plan and Optimum II-Zero, those two plans had the district going from Salisbury through Kannapolis to Charlotte.

I believe one of those two plans, my recollection is through the home precinct of Bill Hefner; in the Peeler plan, the district was moved west to Statesville so that Congressman Hefner would not have his home county divided and be left entirely out of the electoral district that he represented.

Q. Would you turn to Exhibit 42 in your map book?

[353] A. Yes.

Q. And could you tell the court what Exhibit 424 is?

A. Exhibit 424 is a map of North Burlington precincts, specifically, but basically the Burlington area.

Q. Is this a plot from the computer data base? Is this where you print a map from the computer screen?

A. This is a map from the computer data base with a heavy black line being a boundary between the 6th and 12th Districts in the enacted plan.

Q. What did you do in North Burlington? Can you use this map to explain to the court what you did?

A. Yes. In North Burlington precincts, you see to the right a little — looks like a little house right over says 113B and 113A. That house represents the residence of State Representative J. Fred Bowman, and the district

line in this case was drawn so that Mr. Bowen would be in the 6th District.

Q. Okay. Do you know why, or in your own mind, why?

A. Yes. The district was drawn that way because I was told that Representative Fred Bowen was to be in the 6th District, not in the 12th.

Q. Okay. Turning to the 1st District?

A. Yes, Ma'am.

Q. Let's talk about the 1st District and its composition a little bit. Are you familiar with what's called the Old [354] Black 2nd?

A. Yes. The Old Black 2nd.

Q. What is the Old Black 2nd?

A. The Old Black 2nd is the 2nd Congressional District in the 1880's and 1890's, there was a slightly different map in the 1890's than in the 1880's, but they were the last two plans where black Congress members were elected in North Carolina, prior to this plan here.

Q. Do you have a copy of Stipulation Exhibit 63?

A. I do not have that here currently.

Ms. Smiley: May I approach the witness, your Honor?

Judge Phillips: Yes.

A. Yes, this is Stipulation Exhibit 63.

Q. And is the 2nd District the one you referred to, the Old Black 2nd?

A. Yes.

Q. And did you use that, your knowledge or — you were familiar with this district when you were drawing the plan?

A. Yes. When we started drawing a minority black district that became Chapter 601, I worked with Representative Fitch during our computer training to start creating a majority black district. The point where we started from is — I know from reading history where the [355] location of the black 2nd was and I went back to the legislative library to a map we had in the legislative library in compendium of congressional district maps. We started with the counties in the Old Black 2nd to build a minority black congressional district on the thesis that you can look back in history to perhaps help predict something that can happen in the future.

Q. So, — strike that.

Going back to the Peeler plan, it had a minority district in the northeastern area?

A. Yes, it did.

Q. What's the major difference in the 1st District on Chapter 601 and in the Peeler plan?

A. The major difference is the absence of Durham County, the urban area of Durham County that's the major district between the 1st District of Chapter 601 of the Peeler plan and enacted plan.

Q. When you say that's the major difference, what happened, exactly, to the county?

A. Durham County was placed in the 12th District in both the Peeler plan and Enacted Chapter 7.

Q. What was the effect of that?

A. To make the 1st District far more rural, and in order to allow it to have sufficient population and be majority black, to make it spread far and wide through the eastern [356] and southeastern part of North Carolina.

Q. Was there a political reason, to your knowledge, for putting — removing Durham from the 1st?

A. Yes. There were a number of candidates who had announced or were planning to run for Congress in the 1st District who were black prior to the Justice Department having turned down Chapter 601, one of whom was Thomas Hardaway, who was the author of the Optimum II-Zero Plan that went to the Justice Department and was shown partially at one of the exhibits, Exhibit 421.

I believe that one of the reasons for separating Durham from the remainder of the east and going to two districts was so that Mickey Michaux, who was a prior candidate in 1982 in the 2nd Congressional District, would not be in the same congressional district as Thomas Hardaway, another black legislator.

Q. Now, in the eastern district, there are some narrow corridors connecting different areas.

A. In the enacted plan?

Q. In the enacted plan.

A. Yes.

Q. And in this eastern district, what purpose did the corridor serve?

A. The narrow corridors in the enacted plan served several purposes. They were to connect various areas so [357] the district would be predominantly rural. They were also to help preserve the core of the 2nd and 3rd Districts and 7th District, keep Congressman Lancaster in the 3rd District, Rose in the 7th, and Valentine in the 2nd, in districts that were winnable.

As we did this, part of the situation was that Representative Valentine lived in a precinct that was about 45 percent black, as did Representative Lancaster. So the districts were essentially driven away from those areas so as to aid the chances of those members of Congress in approaching re-election so —

Q. All right, Gerry. In dividing this eastern district and this corridor, did you again use the population statistics through Exhibits 406 and 407?

A. Yes, I did use them again to look at the rural populations, total populations of the districts, not the rural black populations.

Q. Did you run — was it a Places Report?

A. Yes, that was run on this plan periodically as it was developed.

Q. As you were developing the east you would run the Places Report?

A. Yes. The goal and instruction — the goal and resulting instruction was to keep it below 20 percent, above 80 percent of the population of communities of under [358] 20,000 or unincorporated.

Q. Okay. Looking at the Peeler plan again that you were working on, were there changes made in New Hanover County?

A. Yes.

Q. Would Exhibits, Map Exhibits 425 and 426 help you in your testimony?

A. Yes. Exhibit 425 shows the boundaries of the 1st Congressional District in New Hanover County as they were in the Peeler plan. Exhibit 426 shows it as it was in the enacted plan. There are two differences, one on the south central part in the enacted plan. There's about six or eight extra blocks that stick out from the south, and there is one block that sticks out in the enacted plan on the north central part of it that you see. There's more area in the enacted plan in Wilmington there than in the prior plan.

Q. What were the purpose of these changes?

A. I received a fax from the National Committee for an Effective Congress from John Merritt to make these changes which were represented as having been agreed on between Congressmen Rose and Lancaster.

Q. All right. In this redistricting process, did you, on occasion, hear from various Congress people or their aides?

A. Yes, often.

[359] Q. And did you just take instructions from them in making changes, or how did you handle it?

A. No, I didn't take instructions, I received instructions from them, but I didn't carry out anything without approval. Sometimes I would take what they had done and put it on the map to show legislators, and sometimes I would wait to do anything until instructed whether to proceed or not.

Q. Okay. In the Peeler plan again, where was Sampson County?

A. In the Peeler plan?

Q. What had been done to Sampson County?

A. Let me find it.

Q. That's 418?

A. Yes, that's Exhibit 418. In the Peeler plan, Sampson County was divided between the 1st and 7th Congressional Districts.

Q. What did you do to Sampson County?

A. In the prior Congressional Plan from the 1980's, Sampson County had been in the 3rd District, and between the Peeler plan and the enacted plan, Sampson County was moved, which was the home county of Ed Bone, one of the co-chairs of the Redistricting Committee, was made whole and put entirely within the 3rd Congressional District where it had been in the '80's.

[360] Q. Was there an intended effect in your mind on Martin Lancaster's district?

A. Yes, to assist Congressman Lancaster by putting all of Sampson County back in his district.

Q. As a result of your moving Sampson, did you have to do something to Duplin?

A. Yes. In order to keep Fayetteville and New Hanover County in the district, the area of the district reaching down that way was shifted east from Sampson County to Duplin County.

Q. All right. And were there changes made in Pender County going from the Peeler plan to the enacted plan?

A. Yes, there was a change made —

Q. All right, Gerry. Looking at Exhibits 427 and 428, would they help you illustrate your testimony?

A. In Exhibit 427, the yellow shows the area of the 3rd District in the Peeler plan. In 428, the yellow shows the area of the 3rd Congressional District in the enacted plan in Chapter 7.

Q. All right. And what is this a map of specifically?

A. An area called Grady Precincts in Pender County, the central part of the map.

Q. Okay. And what did you do with Grady Precincts, specifically?

A. Well, ensured that blocks 407 — the area of as we [361] move from Sampson to Duplin County, a large — most of Grady Precincts was being put into the 1st District because the district was moving towards the east there with some of these changes. My initial plan for that had almost all of Grady Precincts in the 1st Congressional District.

Q. Which is the Grady Precinct?

A. The precinct line here is not very visible. You can see it on the Peeler plan map.

Q. Can you give us some census block numbers that will help us?

A. Yes. There's a brown line between Blocks 305 and 407 in the northwestern corner of the Map A between Caswell and Pender County.

Q. So if you move to the Map 428?

A. You can see there's a small neck of Grady Precincts in Blocks 407 and 409 that still remains in the 1st District rather than following perhaps a smoother boundary down the river there.

Q. And why were you making these changes to Grady precincts?

A. There was an aide who — I don't know the name of that person — an employee of Representative Martin Lancaster, I understand, a member of district staff, that lived in Block 407 or 409, so that person would continue [362] to reside in the 3rd Congressional District.

Q. And still dealing with the 1st District, for the record will you briefly define who Walter Jones, Sr., was and Walter Jones, Jr., is?

A. Walter Jones, Sr. was, until his death, a member of Congress representing the 1st District, I believe from 1965 until his death. Walter Jones, Jr. is his son and has been a State representative from Pitt County for, I'd say, the eight to ten years prior to enactment of Chapter 7.

Q. Did they live in the same precinct?

A. Yes.

Q. In the course of drawing the enacted plan, what happened to their precinct?

A. The initial — as I mentioned, the initial goal was to keep each member of Congress in their current district.

At some point during the process, Representative Walter Jones, Sr. stated he was not going to run for reelection. So there was much dispute about what to do in this case because Walter Jones, Jr. had said that he was going to be a candidate for Congress, and there was some concern that he would be running in the 1st Congressional District where his father had been a Congressman for many years.

So several different plans alternated that precinct between the 1st and 3rd District until it wound up back [363] in the 1st District in the enacted plan as Mr. Jones made, I think, several protests in committee requesting that be done, and it was.

Q. Okay. Were there some changes in the 1st District made to Wilson County?

A. Yes, there were.

Q. Do you have Map Exhibits 429 and 430?

A. Yes.

Q. Can you use them to tell the court what happened to Wilson County?

A. Unfortunately, they are not in the same scale. One is vertical, one horizontal. 429 shows the north part of Wilson County. You can see the brown area in District 1 is confined to the southern area of the precinct. In the enacted plan, you can see it spread through much of the further northern part of that precinct.

Q. And in your mind, what was the purpose of this change?

A. Representative Toby Fitch, who was one of the co-chairs of the Redistricting Committee, lived in Wilson County, and this was to add more of Wilson County, his home county, to the 1st Congressional District.

Q. Okay. What did the Peeler plan do with Goldsboro and Wayne County?

A. The Peeler plan had — let me look back before I [364] answer that question.

Q. If you want to reference the map exhibit no.?

A. 418. The Peeler plan had all of Wayne County in the 3rd Congressional District.

Q. And is there a major black concentration there?

A. In Goldsboro, yes.

Q. And was there an incumbent in Wayne County?

A. Yes, Representative Martin Lancaster lives in Goldsboro, in Wayne County.

Q. So what happened to that precinct?

A. Well, Representative Lancaster's precinct was — is, I believe, 45, 46 percent black. That precinct was in the Peeler plan — you want me to talk about the Peeler plan?

Q. Well, did you make changes?

A. The only change in Wayne County between the Peeler plan and the enacted plan was that 7 percent in the southeastern part of Wayne County were put in the 1st Congressional District in the enacted plan, but the bulk of Wayne County stayed in the 3rd District, Martin Lancaster's home district, home county.

Q. What would have been the effect on the rural urban nature if Goldsboro had gone into the 1st?

A. If it was there rather than Columbus and Bladen Counties, which are at the very end of the district, the district would have been much more urban.

[365] Q. Had the Department of Justice, in its objection letter expressed concerns about central and south central portions of the state?

A. Yes, in the Justice Department —

Q. Wait a minute.

A. Yes, they did.

Q. In your mind, what were those concerns?

A. The Justice Department said there was substantial black population concentrations in the central and south central portions of the State, and none of those counties were included in a majority black congressional district. And the legislature responded to that letter because many of the counties in the central and south central parts of the state were, in fact, in the enacted plan and placed in a majority black district.

New Hanover, Cumberland, Duplin, Columbus, Bladen, were placed in the 1st Congressional District. Parts of those, maybe one or two more I didn't mention, Pender and Mecklenburg County, which is in the central part of the state, was placed in the 12th Congressional District.

Q. Placing those counties that you just mentioned in the 1st District, would that alter the rural nature of the 1st District?

A. Well, some of those counties are more urban, such as New Hanover and Cumberland, but most of them, Bladen [366] Columbus, Pender, Duplin are very rural.

Q. And in adding those counties, were you able to maintain your rural percentages?

A. Yes. Now, from the Peeler plan, the changes we made there were basically Duplin, changes in Pender, and adding Columbus, yes. In doing those, we were able to keep that balance.

Q. All right. Let's look at the 5th District.

A. Yes.

Q. For a few minutes.

A. Yes.

Q. Who was the incumbent?

A. Steve Neal.

Q. What's his party?

A. Democrat.

Q. Were you aware of any particular concerns about Congressman Neal's district?

A. Yes, I received several phone calls from employees of Representative Neal expressing concerns.

Q. And what was your understanding of those concerns?

A. That when Winston-Salem was added to the Fifth Congressional District, it was as a result of the changes after the public hearing. These aides expressed a lot of concern that Representative Neal could no longer be elected in the district.

* * * *

[380] Q. Let's look at the 8th District.

A. Yes.

Q. Who's the — who was the incumbent in the 8th District?

A. Bill Hefner.

Q. What's his party?

A. Democrat.

Q. Okay. And are you aware of his committee assignment in Congress?

A. He's an Appropriations Subcommittee chair, one of, I believe, eight in Congress Appropriations Subcommittee chairs.

Q. Were any concerns raised about his district?

A. Yes. Representative Martin Lancaster called me personally to express some concerns.

Q. And what's your understanding of the concerns about Congressman Hefner?

A. My concern was that, with the seniority system in Congress, that having senior members, especially those that were Appropriations Subcommittee chairs, were valuable to the State, and Appropriations Committee chairs oftentimes many federal projects found their way to the [381] home state of the Appropriation Subcommittee chairs. And Mr. Hefner was such, and some of the proposed plans, such as the Balmer Congress 8.1 and the Optimum II-Zero Plan would probably result in the defeat of Congressman Hefner.

Q. So how did you address those concerns?

A. Representative Lancaster told me that he thought it was more important, if it came down to a district that would benefit him or Representative Hefner, he would rather have it drawn to benefit Mr. Hefner. So, that was taken into consideration in some of the decisions that were made. But basically we kept Cabarrus County in the 8th District and included, as much as possible, counties in the area of Union County just to the edge of Fayetteville and Robeson Counties; kept them or placed them in the 8th Congressional District.

Q. And what did you believe was the effect of doing that?

A. Was to continue having a district where Congressman Hefner would be reelected.

* * * *

[383] Q. Are you aware of any concerns about Congressman Rose's district, what particular concerns there were?

A. There was a great deal of concern with the one proposal, was to have a district from Charlotte to Wilmington, and that would have taken the core out of the

7th Congressional District to put it in a district that was not even majority black. And it would have — the concern was under that kind of plan with the district from Charlotte and Wilmington, Representative Rose, along with Representative Hefner, would have been defeated.

Q. Is Robeson County in the 7th District?

A. Yes, it is. In the enacted plan, I think all but two precincts were in the 7th District, or maybe all but one precinct; in the prior plan all of it was in the 7th District.

Q. Do you have any particular familiarity with Robeson County?

A. Yes, I do.

Q. What's that, briefly?

A. In 1987 I worked on the merger of the five school units in Robeson County, was responsible for drafting that redistricting plan, meeting with legislators, meeting with members of all three racial groups in Raleigh, as well as [384] in Pembroke.

Q. Did you become familiar with politics in Robeson County?

A. Yes. From reading election returns and from talking to members to persons of all three races from that county.

Q. And what is the demographic make-up of Robeson County?

A. It is — there is no one race that's a majority. I believe that whites are about 40-some percent of the county, Native Americans or Indians, about 33 percent, and blacks about somewhere between 25 to 30 percent of the population. All roughly.

Q. And what are the Indians there, are they a particular tribe?

A. They refer to themselves as Lumbees.

Q. Okay. And was there any reason in your mind for keeping the Lumbee Indians in Rose's district?

A. Congressman Rose had done a lot of work trying to get legislation passed to have the Lumbees recognized as a — federally recognized, which confers all sorts of status under the Federal Law, and working on that project for a decade. I think that I understood there were a lot of ties between Native American groups, because of that, and Congressman Rose.

Q. All right. You mentioned briefly before an [385] alternative that went from Charlotte to Wilmington?

A. Yes.

Q. In terms of that, was that a majority minority district?

A. It was majority if you combined blacks and Native Americans, Indians, yes.

Q. And did you look at election returns from the Robeson County area?

A. Yes, I did.

Q. Okay. And what understanding do you have about cohesiveness of the American Native and African Americans of Robeson County?

A. In Democratic primaries where there's a black candidate or a Native American candidate, in the returns — I looked back all the way from 1982 to '92, that I believe that from for local candidates, such as Clerk of Court or Sheriff or County Commissioner on at-large basis. When there was a Native American candidate, the blacks voted for white candidates, and when there was a black candidate, the Native Americans voted for

the white candidate. No cases did the Native Americans vote for the other race when the race was between a white candidate and member of either of those two groups.

Q. In your mind, based on your work in Robeson County, in combining the Native American and African-American [386] communities, does that form an effective voting block?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. In my opinion, from examining all the election returns where there were a black or Native American candidate, that it was not an effective voting majority because the Native Americans would, from past history, tend to vote for the white candidate. If there was an American Native candidate, the blacks would vote for the white candidate in the Democratic primary.

Q. In your own mind, was this another objection to another Charlotte to Wilmington district?

A. Yes. In fact, that district would not have elected in, having a black or Native American be the Democratic nominee in a district from Charlotte to Wilmington, yes.

Q. With respect to urban rural characteristics of the area, what were your views about a Charlotte to Wilmington district?

A. That I did a report, one of these Places Reports on the Charlotte to Wilmington district. Of all of the alternative plans before the General Assembly that had two majority black or two majority minority districts that had the least urban percentage of any of the districts, the Charlotte to Wilmington district was the lowest. I think it was, opposed to 80 percent, seems it was in the 50's.

[387] Q. Did it have a rural —

A. Basically half rural, half urban.

Q. In the 7th District that — in the enacted plan what became of the 7th District, could you characterize that in terms of urban or rural?

A. The 7th District in the enacted plan?

Q. Yes, Charlie Rose's district, the 7th District; Congressman Rose's district?

A. I would say I have not run — I did not look on the report for the urban/rural nature of the 7th District. I would say it's probably about 50/50.

Q. Okay. Were there any concerns about Cumberland County and Fort Bragg with respect to the 7th District?

A. Yes, aides to — you know, going back to the previous question, I think the core of Fayetteville and Wilmington were in the 1st District. So probably the 7th would wind up more rural than I stated. In terms of the 7th District and Fort Bragg, I guess there were some concerns about whether the military reservation itself was going to be in the 7th District or not.

Q. And what did you end up doing with the military base?

* * * *

[388] (Witness returns to the witness stand.)

A. The military reservation, that part of it which is in Cumberland County, is in the 7th District of the enacted plan.

Q. Was that part of the core of the prior 7th?

A. Yes.

* * * *

[390] Q. And what about the 2nd District, who was the incumbent?

A. Tim Valentine.

Q. And what was his party?

A. Democrat.

Q. Or is his party?

A. Democrat.

Q. Were you aware of any concerns about Congressman [391] Valentines's district?

A. Yes. That it also be a district where he could be reelected as well.

Q. Did you hear from Congressman Valentine or his people?

A. Not from him personally, but from a number of his aides.

Q. What was your understanding — did they express concerns to you in particular?

A. First concern was that Congressman Valentine not be placed in the 1st Congressional District.

Q. Okay.

A. Second concern that he have as much of his previous district as possible in conjunction with all the other things that were being done all at once.

Q. Were you aware of one of his committee assignments?

A. I believe he's co-chair of the Science and Technology Subcommittee responsible for science research grants.

Q. Did that have some effect on what went into his district?

A. His aides told me he wanted to retain some or all of Durham County in his district. It was the prior core of his district and much of the committee's work, his work on the committee, was trying to direct research

grants to the Research Triangle Park, all the business which had been in [392] the Congressional District and continued to be in the enacted plan.

. . . .

[400] Q. And in terms of concluding with Chapter 7, did you zero out the plan?

Can you first explain what zeroing out is?

A. Yes. When any plans are basically done with the initial run through of the plan, it's done with population deviations in the area of 200 to 1,000, plus or minus; but under the Karcher case, it seems to indicate that no deviations are permitted, except in some very unusual circumstances.

So, at the very end of concluding any process, the deviations are reduced to zero or one in each of the 12 districts?

Q. And how do you zero it out?

A. They're taking 11 units, whether they be precincts or townships, one matching each pair of districts that each have a larger population than the deviation at that point. The deviation at that point was 200.

I would look for any persons on any plan with a 12 district plan, would look for 11 precincts where one and two came together, where two and three came together, and starting from one end of the state to the other, and reduce the deviation to zero, and going between the 1st and 2nd District, and between the 2nd and 3rd, perhaps between the 3rd and 4th, moving in one direction or the [401] other, until the deviation was reduced to one for the entire plan.

Q. How many precincts did you have to split?

A. Ten precincts, plus one township in Rutherford County.

Q. When you made these divisions, did you cut any legislative census blocks?

A. No.

Q. Okay. And could you briefly — I think you have talked before about what a legislative census block is.

Explain what distinction you are making with a legislative census block.

A. In zeroing out the districts, either by legislative census block or the Census Bureau census block, but to explain the difference, as I explained, there were about 100 blocks in each category of adding precinct boundaries in 21 counties or showing the boundaries of prior State House and State Senate districts, which we were required to do under Section 5.

Q. So you didn't cut any census blocks when you zeroed out?

A. That's correct.

Q. Does zeroing out have some effect on the lines and shape of a district?

A. It makes them more irregular than they otherwise [402] would have been, if you assume precinct boundaries were regular.

Q. In the enacted plan, you drew two majority black districts?

A. Yes, I did.

Q. Was race a factor in drawing those districts?

A. Yes, it was.

Q. Was race the sole factor?

A. No, it was not.

Mr. Farr: Objection

Judge Phillips: Overruled.

A. No, it was not. There were a number of other factors that I discussed, chords of existing districts, presuming the opportunities of incumbent congressmen to be reelected, accommodating concerns of individual legislators, members of Congress, committee chairs, other things that I covered in my testimony already.

Q. Does that include the urban/rural analysis?

A. Yes, and including the keeping the 1st and 12th District, one very urban in nature and the other very rural in nature.

. . . .

[416] Q. I enjoyed your testimony. I think it's fair to say when Chapter 7 was being created, there was a little bit of political gerrymandering going on?

[417] Ms. Smiley: Object to the term.

Judge Phillips: Well, let him answer if he knows what that term means and can respond to it.

A. I think from the articles that I have read or historical publications, I think there were a lot of press accounts and scholarly articles that called it political gerrymandering.

Q. And you certainly testified today that there were a number of changes that you made to further the interest of incumbent Congressmen?

A. Yes, I had.

Q. And most of the ones that you testified that you made changes for were incumbent Democratic congressmen; is that correct?

A. Most of them were, yes.

Q. And you testified today that there were a number of changes that you made that were suggested by aides to incumbent Democratic congressmen?

A. Yes, I have.

* * * *

[420] Q. Was there anything you said, authorized or approved in the submissions to support Chapter 601 that you didn't believe was true at the time you prepared or submitted that material?

A. There was nothing in the submission that I believe to be untrue. There was some things I collected from other people that were put in that I wasn't really sure of, some opinions in there, that I didn't have my own independent basis on, but there was nothing that I put in there that I believed to be untrue.

* * * *

[497] Q. Is it not true that you attended a meeting with the Justice Department officials on December 17, 1991, in Washington, D.C.?

A. Yes, it is true.

[498] Q. And Senator Winner, Speaker Blue, Representative Fitch were present at that meeting with you?

A. Yes.

Q. John Dunne, at that point in time, hope I get his title right. Was he the Assistant Attorney General for Civil Rights?

A. I'm not sure of his title.

Q. Did you get the impression he was in charge of the voting rights section for the Justice Department?

A. I got the impression he was making the decision. On the title, whatever title you have to have to do that.

Q. Since the general population of North Carolina was 23 to 24 percent black, it would be fair to have two majority minority districts?

A. He posed it as a question to us. I recall his words were, North Carolina is about 23 or 24 percent black and the plan you submit to us, only one out of the 12 districts or eight percent are black. Don't you think it would be more fair to have two.

That it would more roughly reflect the state's population. I recall him asking that as a question, which is more or less of the same as to what you said.

Q. All right, sir. And would you turn to Trial Exhibit 27?

A. Yes.

[499] Q. Is that not a copy of your December 18, 1991 letter from Mr. Dunne objecting to Chapter 601?

A. Yes, it is.

Q. Isn't it true, Mr. Cohen, that after you, the State, received that letter, that you had conversations with both Senator Winner and Representative Fitch in which they told you that they believed that the Justice Department had exceeded its authority in insisting on two majority minority districts for partisan reasons?

A. I remember something, some legislator saying that, but I couldn't tell you whether it was Mr. Fitch or not. I believe Senator Winner said that. I don't recall whether Mr. Fitch said that or not.

* * * *

[510] Q. Mr. Cohen, prior to the objection letter from the Justice Department, you were of the opinion that Chapter 601 complied with the Voting Rights Act?

A. Yes, I was.

Q. And in your — is it fair to say you changed your mind because of the Justice Department letter?

A. Well, the Justice Department is the administrative agency determined by Congress to determine whether something is in compliance or not, and the government determined it was not in compliance, so I followed the law.

Q. And didn't you say in your deposition you deferred to the expertise of the Justice Department?

A. I don't remember at that point, but I do.

Q. You would defer to the expertise of the Justice Department?

A. I would say in most cases, yes.

Q. Mr. Cohen, isn't it true that you interpreted the Justice Department letter as indicated that the Justice [511] Department did not see geographic compactness as an issue so long as any plan passed by North Carolina contained two majority minority districts?

A. There was a paragraph near the end of the letter that was some import like that, yes.

Q. Could you turn to Exhibit 27?

A. Yes.

Ms. Smiley: You mean Stipulation Exhibit 27?

Mr. Farr: Yes.

The Witness: I have that here.

By Mr. Farr:

Q. Would you turn to page 4?

A. Yes.

Q. Look at the second paragraph from the bottom?

A. Yes, I have that here.

Q. Could you read that paragraph please?

A. Respecting the Congressional Redistricting Plan. We note that North Carolina has gained one additional congressional seat because of an increase in the State's population. The proposed congressional plan contains one major black congressional district drawn in the northeast region of the State. The unusual convoluted shape of the district does not appear to be necessary to create a majority black district, and indeed, at least one alternative configuration was available that would have [512] been more compact. Nevertheless, we have concluded the irregular configuration of the district did not have the purpose or effect of minimizing minority strength in that region.

Q. Is that the paragraph of the letter that you recall as indicating that the Justice Department didn't seem to be too concerned about geographic compactness as long as any enacted plan had two majority minority districts?

A. Well, they didn't have any concern about the lack of compactness in the First District, but I think, generally, I agree with your statement.

. . . .

[546] Q. All right. Now, with respect to the data available to you as you considered the alternatives?

A. Yes.

Q. Did you have before you anything which indicated the racial percentage in terms of what percent was black, what percent was other or what percent was white?

A. I had before me summary totals for each district, yes.

Q. Was that turned into percentage in any way? In other words, did you have a summary total at any point in your calculations, "X" number of persons and that

was the [547] number of blacks and what the percentage was?

A. There was boxes, or windows we called them, in the corner of the screen that could be expanded or made smaller or larger. They could show the percentages or just the raw numbers. Usually I would show as much as I could. Sometimes they got too big and I would put part of it there to show more of the map on the screen.

Q. So, as you went along, you could, if you wished, through one of the windows have access to the percentage of black population at all times?

A. Yes.

Q. Was that also true with respect to the percentage of black voting age population at all times?

A. Yes.

Q. So as you went you knew in each instance as you made changes what effect it might have on the black voting percent in each of the districts that you were constructing?

A. Yes, that information was always there.

Q. All right. Did you occasionally look at that information?

A. Yes.

Q. And did you, for that matter, do that, not only with respect to the formulation of the two districts for Chapter 7 but, earlier, when you were working on Chapter [548] 601?

A. Yes, I did.

* * * *

[572] Q. You speak of communities of interest. Is there any [573] reference to communities of interest in the criteria that were adopted by the two redistricting communities?

A. Committees.

Q. What?

A. Committees. No. No, sir.

Q. Was there any modification of criteria to include communities of interest?

A. There were no modifications adopted by the committee to the criteria after their initial adoption.

Q. Or was there any action by the General Assembly to change those criteria or to instruct the committees to broaden the criteria?

A. No.

Q. Then would it be true there is nothing in the legislative history of Chapter 7 which purports to adopt or to define communities of interest as a criterion to the establishment of Congressional districts in North Carolina?

A. No, I don't think there's anything in the history to indicate legislature felt it was limited to only take into consideration factors in the criteria.

Q. But your answer is no, setting forth communities of interest; is that correct?

A. That's correct.

* * * *

[588] Q. Mr. Cohen, that's this: Was there a compactness program that was purchased by the state?

A. There was on the screen, one of the report things said compactness, or such like that on it.

Q. And that was part of the software purchased from the PSA?

A. Well, it was part of the report that said on the [589] screen, whenever I tried to use it, it would respond by shutting down the computer system.

Q. I see. So this compactness measure was never used?

A. It was not used.

Q. By you?

A. The first time that that part of the system ever actually worked, that came in a computer upgrade that I believe was installed shortly after the enactment of Chapter 7, and none of this, nor with any computer I ever bought, worked at first exactly like the manual said it was going to.

Q. So the compactness program was purchased originally, but never really worked?

. . . .

[614] Q. Okay. Now, Mr. Cohen, without going over further figures, isn't it clear that the blacks in the center cities in the 12th district have been tied together with corridors with a requisite number of whites to meet the one-person, one-vote standard?

A. To the extent that's part — that certainly is part of the answer, yes, to — what you said is correct.

Q. All right. And isn't it true, basically, that the same process has been followed with respect to some of the cities in the 1st district?

A. Well, the rural areas of the east and northeast are much more heavily black than in the Piedmont crescent, so I don't think that's necessarily quite as true, but there's certainly a correlation.

Q. Certainly to some extent it's true with respect to [615] Fayetteville and Wilmington, isn't it?

A. Well, the corridor from Wilmington on up through Pender County there has some heavy black concentrations in it. Fayetteville, I would say your statement is correct.

Q. Basically in Fayetteville you went down south and through Duplin County, came across and went into Cumberland County, wouldn't that be true?

A. From Cumberland went down to Bladen and Pender and then to Duplin.

Q. Let me ask you this. We had talked yesterday about double cross-overs?

A. Yes, sir.

Q. And isn't it true, in order to get from the northern part of the 1st District to the southern part, you have going down through a corridor in Duplin County, and in going through there, you pass through a point which is that point of double cross-over?

A. Yes.

Q. And by the same token, if Congressman Lancaster wanted to go from the eastern part of his district to the western part of his district, he would have to go through the same point?

A. Yes.

Judge Phillips: You mean if he wanted to stay within the district the whole time he was making his [616] transport?

Mr. Everett: That's correct.

A. There's some parts of the district you have to take a boat from one place to the other, but yes, he would have to go through that point.

Q. Actually, if Mr. Lancaster wanted to do that, he, being a human being, I mean, a person occupying some finite space in the three-dimensional world, it would be

impossible for him to go from the eastern part of his district to the western part without going through Ms. Clayton's district?

A. While he would remain in his district, part of his body would be in the 1st District as well, that's correct.

* * * *

[643] Q. In going through the several counties in Districts 1 and 12 with counsel for plaintiff and plaintiff-intervenors, there was some mention of Section 5 counties and Section 2 counties?

A. Yes.

Q. I'm not going to ask you to go through all of those, but more generally, were the people responsible for the redistricting aware of which counties there had been Section 2 findings concerning in the Gingles case?

Mr. Farr: Objection.

Judge Phillips: Overruled.

A. I would say they were painfully aware of that.

Q. In fact, were any of the leadership involved in the redistricting process representing districts where there had been Section 2 findings?

A. Yes. Speaker Dan Blue had been an at-large member of the House from Wake County. His district was changed to a single member district. Representative Fitch, another co-chairman, was elected for the first time out of one of the single member districts created in the Nash, Edgecombe, Wilson County area by result of the district court order as a result of the Gingles case in the Section [644] 2 finding.

Q. Was there any discussion or awareness of the jurisdictions in the State where there had been Section 2 litigation regarding boards of education, county commissions and so on?

A. That was, I think, well known by the individual members of the legislature who represented that area and, to some extent, by staff and, to some extent, by the committee chairs.

* * * *

Q. The question was put to you regarding the criteria that the General Assembly was using in districting and the question is to whether the criteria of community of interest was used.

Did you hear the floor debates on Chapter 7?

A. Most of them, yes.

Q. And there is a full legislative record here of it, but did you hear discussion where the plan was supported on the basis of community of interest?

[645] A. I believe both by Senator Winner and Representative Fitch at least, yes.

* * * *

[646] Q. First of all, do you have personal knowledge as to whether the shape of the district was affected by concerns of community interest?

A. Yes.

Q. And what is the basis of that knowledge?

A. Knowing where the various communities in the urban Piedmont crescent lay and where the various areas of the coastal plain lay and nature of their populations.

* * * *

[647] Q. Mr. Cohen, do you have personal knowledge on the basis of which the decisions were made?

A. Yes.

Q. And I put to you again the question, to what extent were the shapes of Districts 1 and 12 affected by choices made to respective communities of interest you described?

A. Quite extensively. In the 12th District, it was driven by keeping communities of interest of urban communities in the Piedmont crescent together in one district, many of which were either Section 5 covered, or had Section 2 findings.

In the 1st District, putting together predominantly rural communities in the coastal plain that shared similar interests, and were also a number of which had been subject to the Section 2 findings, and probably a majority which are covered under Section 5.

Q. And what extent — let me ask you this.

Do you know, of your own personal knowledge, whether the shapes of these two districts were affected by the results of various incumbency protection goals?

A. Yes, I do know that.

Q. And what was the extent of the effect on the shapes by incumbency protection goals?

A. Quite extensive. Probably more so in the 1st [648] District than the 12th.

* * * *

Good friend of mine, Representative Michaux, but Representative Michaux came down in tobacco area with water in the fields dressed in patent leather shoes and silk shirt and driving a black El Dorado Cadillac and he's distinct between the people that act and react to those types of situations.

Q. This plan that you saw, Representative Fitch, what did it do with Durham? Did it put it in with the Piedmont area?

A. Yes, sir.

Q. And did that appeal to you?

[678] A. Yes, sir, it did. With that gone, it then occurred to me that, hey, I've seen Durham and Orange county over the years bounced around to try to create a district to which minorities could have an opportunity to elect a candidate of their choice. And here Durham was now, in a situation with something that I thought they had a commonality with. They were pretty much all areas that had historical black institutions of higher learning, they were urban in nature, and they were not misplaced or displaced into an area that was rural in nature.

In other words, those who wore suits and didn't work in the field, as such, could be with those who wore suits and those who wore bib overalls could kind of be together with us who wore bib overalls.

Q. Representative Fitch, when you saw these plans, were you put in mind of George White's district?

Mr. Farr: Objection.

Judge Phillips: Leading?

Mr. Farr: Yes, sir.

Judge Phillips: Rephrase it, Mr. Speas.

Q. Representative Fitch, when you were looking at these plans, did you think back to earlier times?

A. Yes, sir, I did. As I say, in the past, I had been involved in Eva Clayton's campaign in 1968, and in Howard Lee's campaign in 1972, and both of them constantly in [679] their speeches referred to being the next person to replace George White, and I did have some familiarity with what George White's district looked like. And I then looked back. And then the Charlotte Observer then ran an article that displayed the Old 2nd, the Old Black 2nd.

And so, yes, I did think about that old district. I thought about ancestors of mine who were slaves down and around New Bern on the banks of the Trenton River and how that type of situation now applied where New Bern and Wilson again were connected for the purposes of congressional district, and I had some ambitions of running myself.

Mr. Speas: Your Honor, may I determine the number of the exhibit?

Q. Representative Fitch, here beside you is Exhibit 302, which is at least one version of the congressional district present plan.

Could you discuss with the court, for a minute, why the district runs up into Winston-Salem and what role, if any, you might have played in that?

A. Originally, from that that I first had seen come back in this Merritt Plan, I don't believe that Winston-Salem was, in fact, in it. We had a public hearing to which a suggestion was made about Forsyth County in Winston-Salem by Mr. Hunter. And then it made sense, as I talked about the Durham to Greensboro to Charlotte, and that area. [680] Winston made sense, and I'm not too sure if some legislators from that area, black legislators from that area didn't also say to me that they had

been left out and that maybe we ought to look at Forsyth County or part of Winston-Salem being included.

Judge Phillips: Let's take a recess until 2:00.

(Lunch recess taken.)

By Mr. Speas:

Q. Mr. Fitch, Representative Fitch, when we — just before we took a break for lunch, you were talking about the information you received in urban and rural districts.

Let me ask you if you made a decision that that idea should be implemented?

A. I did make that decision and I conferred with my co-chairmen on the House side, and I then instructed Cohen to move forward with the proposition.

Q. And also, just before lunch, you were testifying about the inclusion of Forsyth and Gaston County in the 12th District; did you make the decision to include them in the District?

A. As to Forsyth County, yes, I did. And then later on, as to Gaston County and to Gastonia, to round out that I-85, 12th District, yes.

Q. And did you ask Mr. Cohen to implement that decision?

A. I did, sir.

[681] Q. Let's turn our attention for a moment to the 1st District.

A. Yes, sir.

Q. I notice that the 1st District runs past Goldsboro, down into Bladen, Columbus and Pender counties.

Can you explain to the court the reasons why the district goes into those areas and any decisions you made in that regard?

A. Well, there had been some discussions with the Senate leadership as to political considerations concerning Wayne County, which was the home of the then president pro tem of the Senate, and keeping it whole for the benefit of an incumbent congress person, who was Martin Lancaster.

And then with an attempt to go down, after leaving Wilson County, to then go into Duplin and Pender and down in that area to get into Wilmington. Early on, we had seen plans that had been offered by either David Balmer or David Flaherty that had gone from Mecklenburg down to New Hanover, going through Anson and Moore, and in those areas. That didn't feel right and didn't appear to be the type of district that ought to be.

And looking at some suggestions that were made about the concentration of minorities in the southeast, the decision was then made to do a district that would come through, including Wilson County, a small portion that [682] would then come down through Kinston and then go over into Wayne County and a path cut.

The discussion then was whether or not that path ought to be a wide path or narrow path, and it was politically decided that there was a possibility of getting the president pro tem of the Senate to buy into what the House was suggesting, if we were prepared to take that position out. And the Senate fooled us and never bothered with that, and so that particular narrow situation prevailed and the district was then drawn that way.

Q. The district does not go into Robeson County, I believe?

A. No, sir, it does not. And the district didn't go into Robeson County for some of the same reasons that I spoke of before. And there had been a plan that had been brought forth that had theorized that you could create a majority minority district. That, in the opinion of the chairmen, and as we put forth a base plan, was

not a cohesive minority group. That there had been testimony offered earlier on the House plans from Representative Pete Hasty that, even on the floor of the House, that tended to show those groups were not as cohesive in the Robeson area as one would tend to think that they were.

[683] So we did not use that, using and learning from the experiences of the redistricting plan as it flowed from the State House plan. Statistical data from Representative Hasty was offered at that time showing how that area, meaning Robeson, Hoke and Scotland, and more particularly Robeson, in the division, approximately one-third. One-third had not cohesively been together. And, in fact, either always elected two whites and one black or two whites and one Indian; never been before, except maybe one other time, had a representation that was one, one and one.

Q. Was there any political reasons for not going into Robeson County?

A. Yes, sir. As has been indicated by the previous witness, upon the drawings of Chapter 7 in the making up of what was finally agreed upon to be a plan to which an election could take place, different congress persons attempted to have some input and attempted to make some suggestions, as well as different members who were putting it together, realized that there were other political considerations in that there was some value in the United States Congress being able to remain.

Q. Who was the congress person who represented Robeson County?

[684] A. That would have been Representative Charlie Rose, and there was even people from the area, community leaders would also express the mere fact of Robeson County not going into the 1st District.

Q. And did you consult with the leadership in deciding whether or not to go into Robeson County? The other members of the leadership?

A. There was constant conversation with Representative Ed Bowen and Representative Sam Hunt, I'm sure, because of with Robeson County being the native home of Speaker Dan Blue, that at some point in time I did express to him the desire either to or not to go into that area.

And we had just come out of somewhat of a political bloodbath in that area with the debates from Representative Hasty. So I'm sure at some point in time I did confer with him as to whether or not we were leaning on or not leaning on doing it. But, specifically, I don't recall any specific conversation that I would have had with the speaker.

Q. Were instructions given to Mr. Cohen?

A. Instructions were given to Mr. Cohen not to include Robeson County for political reasons that I spoke of a moment ago.

Q. Representative Fitch, you live in the 1st District, I believe?

[685] A. Yes, sir, I do.

Q. Based on your own personal experiences and knowledge, Representative Fitch, would it be difficult for a person to get around in the 1st District to represent the citizens?

A. I personally do not think that it is. I basically get around a good part of the 1st Congressional District as a lawyer earning a living throughout a good deal of those counties and have practiced and tried cases in a great deal of those counties. I personally do not think that it is hard.

It's like anything else that is new, takes a short period of time to adjust to, but that adjustment period, I thought, would not be long and that it would be relatively easy. They're not all superhighways, not all four-lane interstate quality roads, but a person who sits down can very easily understand how to move about either through the secondary or primary roads of eastern North Carolina to travel, to represent, and to be able to effectively represent those who live within the 1st Congressional District.

Q. Representative Fitch, based on your own personal experiences and knowledge, do you believe that the citizens who reside within the 1st District have things in common with one another?

[686] A. Yes, sir, I do. That the 1st Congressional District, in my opinion, is a district in an area of the State of North Carolina that has been left out and blocked out and not really represented or had anyone that they could cohesively look to toward a representation. It is an area that is, in my opinion, deeply entrenched in poverty, and poverty has no boundaries of county or precinct, and that poverty transcends that entire area, including those areas such as Wilson and Rocky Mount and those others. Basically, on a whole, that area would be cohesive and would have interests of commonality.

* * * *

[698] Q. Representative Fitch, with respect to the creation of the first plan, Chapter 601, was it your view at that time that the 1st District was geographically compact?

A. My view at the enactment of the first plan was there ought to have been two. That from the standpoint of being a politician chairing a committee charged with the responsibility of drawing the districts, I drew what

could be agreed upon in the compromise system of politics, and that voice, from time to time, that I was doing my job and I would hope the Justice Department would do theirs. And my committee says that that was, as well as the House and Senate says that this was a plan that we felt, in good faith, was constitutionally permissible as to geographic [699] compactness. I never asked myself that question because compactness, geographically or otherwise, was not one of the criteria to which we were dealing with.

Q. So you never considered it at all during that period of time; that is, leading up to the enactment of 601?

A. No, sir, I answered that question. No, sir.

Q. Similarly, you do not consider it in the period of time leading up to the enactment of Chapter 7?

A. As to whether it was or was not compact?

Q. Yes.

A. Well, I considered that it was ugly, but I didn't consider it in the terms of compactness.

* * * *

[712] Q. Now, in your deposition didn't you testify — and see if this is correct — if I had done my job as chairman of the committee and we had gotten the plan forwarded in good faith, that we thought met all constitutional muster, based on the way we knew and understood the Voting Rights Act and all the other pertinent redistricting cases.

Is that a correct statement?

A. That's correct. Same as a statement I made to you just a moment ago in the courtroom.

Q. So, you hoped it would not pass muster but, nevertheless, as a matter of compromise or otherwise, you went ahead and voted for Chapter 601?

A. As I indicated to you earlier or, to somebody's questions earlier, my personal feelings were that because of past discrimination in the State of North Carolina, and leaving out and locking out her citizens of color, that two congressional districts ought to have been created to which minorities would have a reasonable opportunity to elect candidates of their choice. That was my personal feeling.

My political feeling, and my feeling as the chairman of the committee was that in good faith, understanding the [713] law as it had been interpreted to us, and as I understood it to be, along with the compromise that we had at that time, what met the constitutional as well as statutory law. With that, we proceeded, but that didn't keep me, as an individual citizen, from hoping that we could also have another majority minority district.

I happen to believe that black citizens of North Carolina can represent white citizens of North Carolina as white citizens in the past have represented black citizens, and I think that they can do a good job.

Q. So does that mean you think whites in the past have done a good job in representing blacks?

* * * *

[717] Q. So compactness was not one of the published criteria?

A. That's correct.

Q. And community interest was not one of the published criteria, was it?

A. I don't know if community of interest was a criteria but I know that we went and that was one of the purposes of the public hearing, to hear what the community had to say and what their interests were in it, as they saw themselves blanketed across new districts to be formed.

Whether or not it was a written criteria as complies with the Voting Rights Act in one-man, one-vote, I don't think it was written except for as it may have been published on the notice of public hearings.

* * * *

I do know, at any early committee meeting, we did adopt criteria and at an early meeting we decided we would [718] go nine places, and then one or two representatives said that you are going to these nine places and I would like to have a public hearing in my community, and we extended that to a tenth place separate and apart from the number of public hearings that the Senate also had. So there were 15 or so public hearings to hear what the community had to say about redistricting.

Q. So the timing, in any event, would be shown by —

A. The record would indicate, and the exhibits were, thus, from the minutes of the meeting would indicate which came first.

Q. You became aware that the Senate Redistricting Committee also had criteria, and these were the same as yours, weren't they, so far as you know?

A. I believe that the House and Senate chairs decided that since congressional was something that we had to meet at some point in time, that we could attempt to start by having the same or similar criteria in adopting them together, or else we would have to come back in a conference committee to decide what was actually passed. So in the spirit of trying to work with and get along with our brothers across the aisle, we did it in the beginning in adopting criteria. I believe that's correct.

Q. Your brothers across the aisle are the same people as you referred to earlier as the House of Lords?

[719] A. Yes, sir. They sometimes refer to themselves by their mannerisms as the House of Lords, also.

Q. Did you, in working out your criteria, have the advice and assistance of Leslie Winner and of Gerry Cohen, if you recall?

A. I know that we had, at that point in time, Leslie, and I feel very certain that Gerry also gave input as a staffer as to the types of things that ought to go into criteria for the purposes of the redrawing. Those suggestions were not exclusive.

The matter was opened, and they were presented to the Committee. Either amendments were offered or not offered to what others would think ought to also be criteria, and then whatever the record indicates as finally being the criteria is what was voted upon by a bipartisan committee to which there were at least nine — at least eight Republicans on the House committee, plus Representative Walter Jones, who is now a Republican.

Q. With respect to criteria, isn't the purpose of announcing of — adopting and announcing criteria to let people know why you are doing something?

A. Criteria would be some of the guidelines that should be considered in doing it. They were not — it wasn't all that went into drawing — that was not a written criteria to aid or help incumbents, but, as you move through, those [720] incumbents, Democrat or Republican consideration was given purely because what they may have chaired were to chair or were chairing at that point in time. As in the case of Representative Tim Valentine, who at one point in time some had thought that he ought not to continue to represent Durham and the Research Triangle, but — and having conversation, some of us thought that there was value in having that chairmanship for part of North Carolina, and that senior it — while it wasn't a written criteria, it got to be something that was utilized.

Q. Are you saying, then, that there was actually a concern about having those of us who live in Durham represented by somebody down in rural Nash County?

A. No, sir. What I'm saying to you is those of you who were in Durham before this redistricting effort were represented by Tim Valentine from Nash County, that as we attempted to redraw the lines this time, there was conversation about Representative Tim Valentine, your representative, having worked his way through the seniority system within the United States House and holding a very valuable position that was important to, not only North Carolina, but to the particular area to which he represented.

That, at the stroke of a pen, a congressperson has not power to stop his area from being placed in or taken out. [721] That when all was said and done, it made more sense for North Carolina and for your area of Durham to have that experience and that seniority left to the advantage of Durham and the Research Triangle.

Q. That's because Durham is part of a metropolitan area known as the Research Triangle; isn't that right?

A. I don't know if that's because Durham is part of the Research Triangle. It's because he moved and positioned himself to chair the committee to which the Research Triangle pretty much comes under that committee to which he chaired, and it made good political sense for me to have a North Carolina, and for him to chair that committee rather than that area to be removed from underneath his constituency and have it represented per chairmanship from somebody from Georgia or Alabama or Mississippi or California.

* * * *

[732] Q. Representative Fitch, did I understand your testimony to be that sometime in 1991, when the redistricting process started up, that there was a decision

made by the leadership in the General Assembly that there would be one majority black district?

A. What I said to you, I didn't say it to you, I'm sorry. What I said on direct examination, I went into that session hoping that there would be two majority minority seats drawn. That when I was appointed chair with Representative Ed Bowen and Representative Sam Hunt, that I advocated two. That I was told, when I met with my cohorts from the Senate, that they had met with the congressional delegation in Washington, both Democrats and Republicans, and had indicated to them that there would be no minority seats drawn in North Carolina.

I further said to you, that compromise, in my opinion, started at that point in time, for I thought that we ought to draw two, and the Senate thought that we ought not draw any and so we ended up drawing one.

Q. All right, sir. Do you have any idea about when this [733] meeting took place where you reached this compromise?

A. Well, it really didn't come down as, okay, Fitch, you are right, we won't create two and we won't create any. After that conversation, I was ready to leave and start working on two or one type situation, and it just evolved that when later, when one was advocated that there got to be a meeting of the minds of something that we could then move forward with.

And in a span of time, it wasn't the first week, it wasn't the second week and, it wasn't the third week, because we were not appointed until about the third week. I would have to say it was somewhere between the third week and either the public hearings, or adoption there of criteria, in trying to put it in a span of time for you. So the record would have to show which was the latter, whether it would be the adoption of the criteria or the public hearings. But it was somewhere be-

tween the appointment and that span of time, as best I can recall.

Q. And whenever that was, then, your testimony is that there was a decision reached collectively by the leadership in the General Assembly compromised and to agree there would be one majority black district?

A. Yes, sir, I believe that's correct.

* * * *

[734] Q. Where did you get the number two, why not three or four majority black districts?

A. Because I felt that two was the number.

Q. Was that because that's roughly proportional to the percentage of African-Americans in the general population in the State of North Carolina?

A. That's roughly 22 to 25 percent, depending on who gives the numbers.

Q. Is that why you thought there should be two majority black congressional seats?

A. That is, as well as the fact that I thought the State had a compelling interest to remedy past discriminatory practices, yes.

Q. Were you of the opinion two majority black seats would be required by the Voting Rights Act?

A. Yes, sir, I think I pretty much said that when I said I had to uphold the committee. But I felt within myself that a second district should be drawn, and that if I did my job as the way we understood it in the legislature, and the Justice Department did its job, the matter would come back and we would have to create a second one.

Q. Just so I understand your testimony, before the time Chapter 601 was adopted, you had already reached your own [735] personal conclusion that two majority black districts would be required by the Voting Rights Act?

A. Well, I don't know if — that it would be required. I had hoped and felt and had thought that that was what ought to be.

Q. As you interpreted the Voting Rights Act, you thought there should be two majority black districts?

A. Yes.

Q. Okay. During the process of redistricting, Representative Fitch, did you ever use the concept of geographic compactness?

A. Did I ever use the concept?

Q. Yes, sir. did you ever have any statements about geographic compactness?

A. I might have one way or another. I can't say to you that I did or I can't say to you that I didn't. I know that it was not a criteria, but whether or not in some newspaper or in response to some question or here or there I may have used that term —

Q. Did you understand the Voting Rights Act, as it's been interpreted by the courts, as requiring majority minority or the districts to be based upon compact areas of black population?

A. No, sir, I didn't understand it that way.

* * * *

[736] Q. Representative Fitch, do you recall making the statement in reference to Mr. Balmer's plan or Mr. Justus' plan that the two districts that they were proposing with the majority black population would actually

have the effect of weakening the political influence of the black population in North Carolina by packing them in two districts?

[737] A. That sounds like something I might have said politically, yes, sir.

Q. Did you recall saying something like that?

A. I said I don't recall saying that, but that sounds like something that I might have said politically, yes, sir.

Mr. Farr: Can I approach the witness, your Honor.

Judge Phillips: Yes.

Q. Representative Fitch, I'm going to hand you a number article that was included in the submission that the State of North Carolina sent to the Justice Department in support of Chapter 601. It's an article from *Raleigh News & Observer* dated Saturday June 22, 1991, and I ask you if you could read the portion that I have highlighted in yellow. See the if that refreshes your memory?

A. You want it aloud?

Q. Read it to yourself. And after you have done that, does that refresh your memory about whether you ever made any statements in reference to the plan introduced by Mr. Justus or Mr. Balmer, that the two majority black districts they were proposing would have the effect of diminishing black local influence by packing blacks in two districts?

(Short pause.)

[738] A. Yeah, I think I did say this.

Q. All right, thank you. If I did not identify that, that is in the submission for 601. It's labeled C28-F-1.

A. I believe that that, in the context of which that was, also it was whether or not other black leaders in

North Carolina saw it in the particular fashion that I saw it. And I believe that, as you read that, I think you get a better flavor for the total context in which the statement was made.

My thought was based on the way that those districts had been drawn by colleagues in the House who were from the Republican persuasion, that it was their intent to draw distribution. Not to help minorities, but to help themselves, and to just buy in just because they were creating majority minority districts that may have been proportional for the percentage of population. That there were other ways to do it without doing it in a fashion to which you didn't have influence elsewhere.

Q. Prior to the time Chapter 601 was enacted, did you ever request anyone from the legislative staff to prepare a plan for you which would have contained two majority black congressional districts?

A. No, sir, I didn't do that, and I didn't feel I had to do that since I was the one directing the traffic and sooner or later, at one point or another, I felt like what [739] I thought would actually enter into, which it actually did, by way of the Justice Department in its objection.

Q. Representative Fitch, is it not true that there were several base plans that were considered that eventually evolved into Chapter 601?

A. Yes. The base plan — several were started off with what three co-chairs in the House thought that it was built upon from input from other people and from input from public hearings, et cetera, until finally we had a plan that evolved as Chapter 601.

Q. All right, sir. And in all the base plans that you have reviewed leading up to the enactment of Chapter 601, is it not true that the majority black district was designated as the 1st District?

A. I think in every plan, with maybe the exception of one, the nomenclature was accepted that northeastern district was majority minority or would be one. I originally had said call it two, and then I was informed by staff that the numbering started in the east and worked its way toward the west, and then once that was explained to me, it then followed that way that it kept nomenclature of one. I thought that it ought to be two because it would repeat history.

Q. But regardless of the number, the majority black district was considered, up until the time Chapter 601 was [740] enacted, was located in the northeastern part of North Carolina?

A. That is true, with some ideas that we may end up going somewhere else if it all fell in line, like I thought it would fall in line.

Q. Do you recall making a statement that at least one of those places that were considered by your committee leading up to the enactment of Chapter 601 was fair, legal and reasonably compact, given the geography of this state?

A. I don't remember that statement, but I'm not going to say I didn't make it, in the political context in which it was probably asked.

Mr. Farr: May I approach the witness?

Judge Phillips: Yes.

Q. Representative Fitch, I'd like to show you a newspaper article taken from C-28-F-1 of the State's submission in support of Chapter 601. It's a June 26, 1991, article from the *Durham Herald* and ask you if you can read the section that I have highlighted. Ask you does that refresh your memory on whether you described one of the base plans considered leading up to Chapter 601 as being fair and reasonably compact, given the geography of the State?

A. I believe that I did, and in the context to which there was some difference between the House and the Senate [741] as to the congressional plan at that time, and I believe in the context to which our plan was versus their plan, it is how I probably made that statement in response to the question that would have been posed to me at that point in time. But the context was comparing ours with whatever the Senate had at that point in time, I believe.

Q. Thank you. Representative Fitch, do you recall when the Justice Department objected to Chapter 601. At that point in time, did you become convinced that the Voting Rights Act required the creation of two majority black districts?

A. I don't know if the word is convinced or not. I was personally satisfied and happy that they had rejected it. As I indicated to you before, I was happy because I personally thought that North Carolina ought to have two majority minority districts, and whether or not they did it based on the Voting Rights Act or some other, it happened to have fit what I thought was the right thing to do, be it legally, morally or otherwise. And so, yes, I was happy, regardless of what they based it on.

Q. Do you recall making a statement, Representative Fitch, during the House floor debate on Chapter 7 that you believed Chapter 7 went beyond the requirements of the Voting Rights Act?

A. Say what?

[742] Q. Do you recall making the statement during the floor debates in conclusion with Chapter 7 that in your opinion Chapter 7 went beyond the requirements of the Voting Rights Act?

A. I do not recall making that statement. However, it is in the context of floor debate per rank and file members having all sorts of suggestions as to what you

should do and what you should not do. There were a lot of people who thought that we ought to fight it and go to court. There was some who thought we ought to redraw it. There was some who thought different things, so I might very well have made such a statement politically during the debate. Whether or not I actually felt that way or not, I say to you now, as I've indicated before, I always thought that we ought to have done two. Politically, I might have said that.

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TESTIMONY OF DR. ALLAN LICHTMAN

March 31 & April 1, 1994

* * * *

[743] Mr. Speas: Professor Allan Lichtman.

As Professor Lichtman is coming around, I will advise the court he will be testifying about a single exhibit, it's defendant's Exhibit 401.

Allan Lichtman, being first duly sworn, testified as follows during direct examination:

By Mr. Speas:

Q. In addition, I will advise you that Professor Lichtman's CV appears as Exhibit 1 to his deposition and we present Professor Lichtman as an expert in political history, voting behavior, and quantitative analysis.

Professor Lichtman, have you performed a study of North Carolina's congressional districts for the State of North Carolina?

A. Yes, I have.

Q. And is a report of that study Exhibit 401, defendant's Exhibit 401?

A. Yes, it is.

Q. Would you please, Professor, briefly explain for the court the parts of the report that you have prepared?

A. Yes. There are basically three parts to my report. Part one considered whether there was a rational basis to the North Carolina districting scheme other than race, and in particular, in examining that issue I looked both at the material conditions of other persons included within the [744] districts, as well as evidence of their political opinions to see if there were communities of interest, or as sometimes called communities of interest with respect to these two factors.

Secondly, I examined the question of whether or not these bases, other than race, reflected intentions of the redistricting process by the North Carolina legislature. And finally, I considered some issues relative to the tailoring of the plan from a social science perspective, issues such as the effect of the North Carolina plan on voter participation.

Q. Professor Lichtman, would you describe for the court the manner in which you analyzed the question of the homogeneity of the voters?

A. Yes. The first issue that I considered under the rubric of rational basis other than race, was the extent to which the congressional districts in North Carolina were intentionally homogenous. That is, when you looked at the parts of these districts with respect to both material conditions, things like income and education, and with respect to political opinion, whether those parts were markedly different one to the other within the districts reflecting heterogeneity or whether those parts were similar from one part to the other, reflecting homogeneity.

[745] If the districts reflect heterogeneity, that means people are being placed into the district relatively irrespective of characteristics like income and education or political opinion; conversely, if the districts are relatively homogeneous, that means there is some rationale to the placement of individuals within the district with respect to material conditions and political opinion.

And in particular, I was concerned with the question of whether the challenged districts, that is North Carolina Districts 1 and 12, emerged as especially heterogeneous. That is, did the apparent geographic non-compactness of these districts mean that when you looked at the people within the districts there was heterogeneity; or, conversely, was there no relationship between the apparent geographic lack of compactness and hetero-

geneity, that is, were these districts as homogeneous as other, more compact districts within the plan.

And, in addition, I also compared Districts 1 and 12 to further this analysis to the districts under the relatively more geographically compact 1980 plan as well.

* * * *

[747] Q. Professor Lichtman, before describing your analysis of homogeneity, would you explain to the court the relationship, if any, between homogeneity and voting behavior?

A. Yes. There's quite a clear relationship here. First of all, the kinds of factors that I'm looking at, socioeconomic factors like education and income to a great extent, and to a lesser extent; demographic factors like age and mobility related directly in social science studies to voter participation, to the choice of candidates and, of course, to the responsibilities of members of Congress who vote on matters such as taxation, education, social welfare, economic policy. That clearly ties into the socioeconomic, demographic homogeneity or heterogeneity of their districts and, of course, political opinion, likewise, ties into voter behavior quite directly as well.

Secondly, as a specific relationship to redistricting, there is also a linkage here in that homogeneity or heterogeneity ties quite specifically to [748] representation to the extent that districts are homogeneous with respect to either the material interests within those districts or with respect to the political opinions within those districts.

That means that legislators can respond to and represent those interests to the extent to which material interests or political opinions become more heterogeneous or more diverse. It becomes more difficult for members of Congress to recognize and respond to those kinds of interests.

Q. Professor Lichtman, would it be correct that when you are examining homogeneity, you are determining the extent to which the districts group together people with similar social economic characteristics?

A. We're looking at communities of interest, or sometimes called communities of interest with respect to socioeconomic factors, demographic factors and ultimately, political opinion, as well.

* * * *

[753] Q. Professor Lichtman, when we adjourned yesterday, you were about to describe your homogeneity analysis; that is, the analysis of whether the districts have grouped together persons of similar socioeconomic and other characteristics.

Before we undertake to go into the tables describing that result, I'd like to show you an exhibit and ask you if you could use this exhibit to describe for the court, illustrate to the court, the data and the methodology you employed with your homogeneity analysis. And this Exhibit, for the record, is 401A, your Honor, and it is a table from the — it is a page from what I believe is Exhibit 334.

* * * *

[754] Q. Using Exhibit 401A, Professor Lichtman, could you illustrate the data and methodology you used?

A. Yes. In order to analyze the internal homogeneity of districts, you have to have data that breaks the district down into component parts. The report of the U.S. Bureau of the Census, to which we already referred, I believe 401 does that for each of the districts in North Carolina.

It breaks the districts down into the county or county parts that comprise the district. And we can use [755] that subdistrict data to see whether or not, in the forma-

tion of these districts, the districts were constructed to create commonalities of interest across the parts of the district or whether there was heterogeneity across the parts of the district.

* * * *

[756] A. Yes. If you will look at Exhibit 401A, it's an example of the subdistrict; that is, the county and county hard data taken from the census book. And in this case I'm illustrating the data and method by focusing on the median value of housing, which is the next-to-last column. It's the highlighted column on Exhibit 401A, where it says "median in dollars."

And the first set of highlighted numbers pertain to the 1st Congressional District, and they show that the 1st Congressional District is broken down into a large number of counties and pieces of counties. It's the most finely subdivided district in the state in terms of the number of counties and county parts included. The highlighted information is the median value of housing, of homes for each county part or county within District 1.

So, it's a whole county. It's the median value for that county. If it's a county part, it's the median value only for that part of the county that is contained within District 1. And in terms of the homogeneity analysis, we're interested in seeing the extent to which the values [757] of homes differ from one county or one county part to another.

The greater the difference the more heterogeneous; the smaller the difference the more homogeneous. If you look at the highlighted numbers under District 1 for the median value of homes in those counties and county parts, you can see that, although there's a large number of subdivisions, there is a relative commonality among the housing values. The great bulk of the range from

the high 30's to the low 50's in terms of value; only one that's much above 60 and that's the next-to-last entry at 63,800 but that's only 39 houses or homes from Wayne County. So it doesn't figure very much into the analysis.

By contrast, if you look at District 2, which is the next highlighted set of numbers for median values of homes, among the counties and county parts in District 2, although District 2 includes a smaller number of counties and county parts, you can see there's a lot more heterogeneity among the values. The values go from just over 50,000 all the way up to over 93,000. So, there's a much broader range, indicative of greater heterogeneity.

And what my methodology does is, it takes this data and it uses a standard statistical measure of homogeneity to take what we might get intuitively from looking at these numbers and convert it into a standard mathematical [758] statistic. That enables us, for each district and for each of the many socioeconomic and demographic variables included in my study, to compute a single measure of homogeneity that takes into account the fact that there are different numbers of counties and county parts and that they have different populations in them.

And what my tables do in terms of the homogeneity analysis of material conditions, socioeconomic and demographic, is to look at that measure of homogeneity for each of the 12 congressional districts for some 19 variables, either socioeconomic, like median home value or demographic age and person per household, and then we see whether or not the challenged districts, Districts 1 and Districts 12, emerge as particularly heterogeneous. That is, we're testing whether the apparent lack of geographic compactness in these districts means that they are indiscriminately putting together people irrespective of their age or income or education. And that's what the analysis does.

Q. Professor Lichtman, is the results of your first homogeneity analysis reported at Tables 1 and 2 on pages 10 and 12 of Exhibit 401?

A. That's correct.

Q. Would you explain Tables 1 and 2 to the court, please?

[759] A. Yes. Table 1 on page 10 is the underlying base information for all the county parts and counties included within each district for 19 socioeconomic and demographic variables. Table 1 reports this measure of homogeneity that I just described. The lower the value of this measure of homogeneity, the more homogeneous the district with respect to that variable; the higher the value, the more heterogeneous the district with respect to that variable.

If I can just illustrate with the very first variable, that median home value, and value for District 1 and 12, and the value for District 2 at 24.2 illustrates in a formal mathematical way what our eyeball observation of the two data sets indicated, that there's more heterogeneity in the median value of homes in District 2 than in District 1.

Table 2, then, actually analyzes that base information that is reported in Table 1. And it does so by following a simple procedure. For each district and each variable, it ranks the districts from most homogeneous to most heterogeneous with respect to the measure we just computed.

That is, a ranking of 1 on a particular variable would mean that that district, with respect to that variable, is the most homogeneous of all the districts in [760] North Carolina. A ranking of 12 with respect to a particular district and a particular variable, would mean that that district is the most heterogeneous with respect to that variable.

Again, to very briefly illustrate this, if we look at median home value, we can see District 1 has a rank of 2. That means, in terms of the homogeneity with respect to home values, it ranks second most homogeneous; whereas, District 2 has a rank of 12, which means it ranks least homogeneous or most heterogeneous with respect to median home values.

The critical information derived from this somewhat daunting looking table with a lot of numbers on it is the bottom row of the table. The row labeled "mean." For each district, for all the many variables included in the analysis, the bottom row of the table gives you the mean or average rank. It simply sums the ranks and divides. The lower the mean ranking, the more homogeneous the district with respect to all 19 variables.

When you have a low mean ranking, it means the district is ranking close to homogeneous on these many variables. When you have a high mean ranking, it means on these 19 variables, the district is ranking more close to heterogeneous.

If we look at the mean rankings on the bottom of [761] Table 2, with particular attention to the challenged districts, Districts 1 and District 12, our test that we're performing here is whether or not Districts 1 and District 12, the most relatively non-exact districts, also emerge as relatively heterogeneous with respect to the commonalities of interest within those districts.

And thus we look to the mean rank. If we look at the first entry in the bottom row, that is the mean ranking for the 1st Congressional District. It has a mean ranking of 5.1. Given that there are 12 districts, and if it was all about the same, the mean ranking should somewhere be in the order of 6. This is a relatively low mean ranking. That is, it leans on the side not of heterogeneity, but of homogeneity. In fact, District 1 emerges as the fourth most homogeneous congressional district in the State

with respect to the 19 variables, and that's what that 4 in the parens below the 5.1 indicates.

Secondly, if we turn our attention to District 12, the last entry in the bottom row, it has a mean ranking of 4.2, which means it emerges as the second most homogeneous district in the State of North Carolina.

Thus, we look at an array of socioeconomic and demographic factors, and these are the standard factors that analysts look at. You see that not only the two challenged districts not emerge as particularly [762] heterogeneous; they, in fact, emerge as among the more homogeneous districts within North Carolina in terms of their commonalities of interest on factors like home values, rent values, telephones, vehicles, homeowners, income, unemployment, education, age and mobility.

Q. Dr. Lichtman, what impact, if any, could race have had on the results you reported in Tables 1 and 2?

A. Race certainly could have had an impact on the results I report because Districts 1 and 12, as we well know, differ in their racial composition from the other congressional districts in the State.

The information on that, which I'll refer to, but we don't really need to go to, the table is on Table 5 on page 16 of my report, which simply breaks down what we already know about these congressional districts. And they show Congressional Districts 1 and 12 are the most racially mixed districts in the State. They are at about 53 percent black voting age, at about 45 to 46 percent white voting age; they are among the most racially mixed districts in the United States, in fact.

Now, the other districts are much more uni-racial. They are at least 74 percent white in their racial composition, so that's the difference in race. The two challenged districts are mixed; the other districts tend to be predominantly white.

[763] What would this mean for our homogeneity analysis, to the extent the two challenged districts are racially mixed? That would mean it would be more difficult to find homogeneity in those districts as opposed to the other districts in the State because blacks and whites differ very sharply in the State of North Carolina in their socioeconomic standing, and they also differ in their demographic characteristics. And that information, by way of reference, is reported on Table 6 on page 17 of my report. It simply documents that whites and blacks differ sharply in socioeconomic standing, and also to a certain extent, in demography.

Given that, you are including, at virtually equal proportion, two racial groups that differ in things like median home value, education and income. That would make it more difficult, other things being equal, to find homogeneity in the racially mixed districts as compared to the more uni-racial districts where they are comprised predominantly of whites.

To the extent race has an impact on the analysis, it makes it more difficult to find what we do find from the analysis, that Districts 1 and 12 are relatively homogeneous districts.

Q. Dr. Lichtman, in addition to examining Districts 1 and 12 with the other ten districts, did you do any other [764] analysis of homogeneity?

A. Yes, I also compared Districts 1 and 12 in the 1992 plan to all 11 congressional districts in the previous 1982 plan. And the reason I did this was that whether you use the measures of compactness presented by plaintiffs in this matter, or whether you look at the maps, the 1982 plan was apparently more geographically compact than the 1992 plan.

So, I performed a very stringent test to compare the two challenged districts which are apparently not geographically compact to the relatively compact districts

under the 1982 plan, which also split relatively few counties, unlike the '92 plan, and to see if the two challenged districts emerge as relatively heterogeneous as compared to the more geographically compact districts of the 1982 plan.

And because we have a common measure of homogeneity, we can do that. We can compare plans across census areas.

Q. Are the results of that analysis set forth in Tables 3 and 4 appearing at pages 13 and 14 of your report?

A. That's correct.

Q. Would you explain Tables 3 and 4 to the court, please?

A. Yes. Table 3 is, again, the base data on page 13 of my report. It simply reports the basic measures of [765] homogeneity with respect to the Districts 1 and Districts 12 of the 1992 plan, and the 11 districts of the 1982 plan.

Note here that there are many fewer variables included in the analysis. And the reason for that was not some selective principle, but rather I needed to find common variables that were measured by the census for the counties and county parts, both for the 1982 and for the 1992 plan. So that explains why Table 3 is a subset and not a complete reprise of the variables in Tables 1 and Tables 2.

The actual analysis of the base data is reported on Table 4 on page 14 of my report, in which we rank all 13 districts with respect to homogeneity. That is the two districts that we singled out from the 1992 plan, and the 11 districts from the 1982 plan. And we want to see whether, compared to the '82 plan, the rankings of the two relatively non-compact 1992 districts shows that they are relatively heterogeneous.

If you look at the results, they are reported in row 1 and row 2; row 1 for District 1 and row 2 for District 12. We see row 1 out of the 13 has a mean ranking of 7.2, pretty much in the middle, and District 12 has a very close ranking of 7.3. Indeed, the two districts emerge as pretty much smack in the middle of the distribution.

[766] Out of 13 districts, Districts 1 of the new plan emerges as sixth most homogeneous and District 12 of the new plan emerges as seventh most homogeneous. So, even when compared to all of the relatively compact districts of the 1982 plan, there is no indication here that the challenged districts of the current plan emerge as especially heterogeneous. Rather, they come out pretty much in the middle of the distribution. In fact, their average rank of 6.5 is exactly the average rank you get out of 13 districts. Just 13 divided by 2 is the 6.5.

Q. Dr. Lichtman, did you examine the homogeneity question using any data other than socioeconomic and census data?

A. Yes, I did.

Q. And would you explain the data you looked at, this other data?

Yes. The other data that I looked at is the data pertaining to political opinion. The census does not report such data. The census reports basic socioeconomic, demographic, and population data. Therefore, I had to go to an independent data source to get information on political opinion. And I asked the State to commission a poll, and they hired a public opinion firm within North Carolina marketwise to do a survey of public opinion within the congressional districts of North Carolina.

[767] Resources precluded us from examining every single one of the 12 congressional districts in terms of a survey, so what I asked the survey takers to do was, of

course, look at the two challenged districts, Districts 1 and 12, to assess public opinion on certain issues — and I'll get to them in a moment. And then as a control on that, to look at the most apparently geographically compact district in the State, and that is District number 4.

Do I need to go to the board to point it out? Everybody knows, okay.

So what we did, then, was we looked at public opinion in Districts 1 and District 12, and as a control on it the predominantly white, most apparently geographically compact district, District 4, and we asked, marketwise, to do essentially two distinct sets of public opinion type of questions.

One is a standard set taken from the Gallup Poll, and that's the rating of problems as from not all important to very important. And the second set was some policy questions. The questions are outlined on page 19, Table 7 of my report.

And the problems facing the country that we asked about are standard ones: economy, unemployment, health care, poverty, homelessness, the federal budget deficit, [768] crime, educational quality, ethics and drugs.

We then asked three policy questions which we related to federal policy, but which we believed was salient to people in the State, and that included a question about whether you were for an increase in the federal tobacco tax, whether you were for removing U.S. trade restrictions with Mexico, and whether you were for more restrictive federal laws on handgun purchases.

For purposes of statistical analysis, as the table indicates, when I report results for the problem questions, I report them as the percentage identifying the particular problem as a very important problem. And for the policy

questions, I report the results as the percentage for the policy. So, it's very simple percentage type of analysis that we can use with respect to the marketwise survey information.

Now, it's crucial here, in terms of the homogeneity analysis, is that we subdivided the information in exactly the same way the Census Bureau subdivides the North Carolina congressional district. That is, we took the respondents and we broke them down by county or county part.

So, for District 1 we had a set of opinion data for each of the counties or county parts within that district, and likewise for District 4 and District 12. Thus, we could see whether or not opinions were similar or [769] different from one subunit of the district to another, and we could also compare the relative homogeneity of opinion in Districts 1 and Districts 12 to the highly geographically compact District number 4.

Q. And, Dr. Lichtman, are the results of this analysis of the opinions at least for all voters set forth on Table 8 of page 20?

A. That's correct.

Q. Explain Table 8 at page 20 to the court, please.

A. The procedure is slightly different here, but aimed at the same kind of test, because we're dealing with a sample, and because we're dealing with political opinions, the test that I performed was a test of statistical significance.

That is, when you look at the counties or county parts within a district and you looked at the range of opinions on these, each issue separately and each policy question separately across the county and county parts of the district, were there statistically significant differences in opinion across those counties and county parts, or were opinions sufficiently similar that you would not find statistically significant results.

I used the standard test of statistical significance called the chi-square test, and I used a standard level of statistical significance that's conventional in social [770] science analysis called the .05 level, and that corresponds to a probability of five in 100 of getting a certain degree of difference nearly by chance or random factors.

Thus, if the probability of getting results merely by chance was .05 or below, I identified that as a statistically significant difference and so highlighted it on Table 80, page 20 of my report.

Q. Would you summarize Table 20 — excuse me, Table 80, page 20 for the court?

A. Yes. The way to read this table is not to look at the chi-square. That value, I know, is dependent on the number of counties or county parts within the district, but to look at the measure of statistical significance which corresponds to a particular chi-square value, and we can read it right down for each district.

We can see for District no. 1, looking at the ten problem questions and the three issue questions, that there are four statistically significant differences on question three, four, five and question twelve. So, in four instances we found sufficient heterogeneity in opinion for it to be statistically significant.

Likewise, we look at District 4. We also find four instances of statistically significant heterogeneity on questions four, five, eight and eleven. I'm not [771] particularly concerned with the individual questions that are statistically significant, but with, rather, how often we find statistical significance. And we find, again, on four questions.

Finally, on District 12, we find statistically significant results on two questions; question 12 and question 14. To summarize the analysis then, generally opinion in all three districts is fairly homogeneous, you are not finding

in a majority of the questions statistically significant differences. To the extent you want to identify, however, differences in homogeneity based on this, District 12, one of the challenged districts, in fact, emerges as most homogeneous with respect to opinion, with only two statistically significant differences. And District 1 emerges as about equally homogeneous with District 4, with four instances of statistically significant differences.

Now, I wouldn't push that very far because there's not a lot of difference, but basically what the analysis shows clearly is, there's no indication that the apparent geographic non-compactness of Districts 1 and 12 compared to District 4 has meant that with respect to commonalities of interest on political opinion, that Districts 1 and Districts 12 emerge as heterogeneous. To the contrary, they emerge as about homogeneous or, if anything, a shade [772] more so than District 4.

Q. Dr. Lichtman, did you go on to examine the racial effect of opinion?

A. Yes, I did.

Q. And why did you do that?

A. Well, first of all what we find is that, just as there are socioeconomic differences and to some extent demographic differences between the black and white populations of North Carolina, so too, as we find, elsewhere, there are opinion differences among blacks and whites within North Carolina. Those opinion differences are documented in Table 90, Page 22 of my report. They show some rather sharp differences in political opinions between blacks and whites within the state of North Carolina.

For example, question 3 on unemployment. Blacks are more than twice as likely to consider unemployment a very important problem. Question 4, health care.

There, more than fifty percent of blacks consider health care a very important problem. Poverty and homelessness. They're about twice as likely to consider poverty or homelessness a very important problem.

So, once again, given that Districts 1 and 12 are racially mixed and that District 4 is relatively racially homogeneous, it would be more difficult to find upon [773] homogeneity in Districts 1 and Districts 12, given that, again, you are mixing two racial groups. That among these three districts, differ quite sharply in their political opinions.

So, again, from the perspective of a social science analysis, the finding of relative homogeneity, when we looked at all respondents in Districts 1 and 12, is a finding made more difficult by the racial mix of those districts.

Given, then, that blacks and whites differ in their opinion, I was able to do here what could not be done with the homogeneity analysis in the census because it doesn't break it down by county, by race. But because we identified the respondents by race for our political opinion study, we could look separately at the blacks in Districts 1, 4, and 12 and separately at the whites in Districts 1, 4, and 12 and do exactly the same kind of analysis that we did with all the respondents to see to what extent, looking only at blacks, these districts are homogeneous and to what extent, looking only at whites, these districts are homogeneous in their political opinions.

Q. Does Table 10 on page 23 report your analysis of opinion for the black respondents to the opinion poll?

A. Yes, it does.

[774] Q. Would you explain that table?

A. Yes. We can see the results very quickly. On black respondents, there is an extreme degree of homo-

geneity within each district with respect to black opinion. That is, there's an extreme degree of commonality of opinion across the counties and county parts of District 1, 4, and 12.

District 1, in fact, has no statistically significant differences within it on any of the questions with respect to black respondents only. District 4 has one statistical difference on question 6. And District 12 has only one statistically significant difference on question 12.

Thus, there is no indication, certainly from the table, isolating black respondents that with respect to the black people placed in District 1 and District 12 that, internally, from one part of the district to another that they differ significantly in their political opinions. Indeed, all three districts are about equally homogeneous with respect to black opinion.

Q. And did you examine the opinions of white respondents separately?

A. Yes.

Q. Is that at Table 11 on page 24?

A. Yes.

Q. Would you explain that table, please?

[775] A. Yes. That table, again, is the exact tables that we have been looking at, except it isolates white respondents. And we get a little more difference of opinion among whites within each of these three districts.

If we look at District 1, there are three statistically significant differences. If we look at District 4, there are, likewise, three statistically significant differences among whites. And finally, if we look at District 12, there are two statistically significant differences among whites.

So, there are somewhat more differentiation among whites, but still the conclusion to be drawn from this

table is that, with respect to all three districts, there is a fairly considerable amount of homogeneity of opinion of white residents. And certainly, Districts 1 and District 12 do not emerge as especially heterogeneous. In fact, again, District 12 has the fewest number of statistically significant differences at two; and Districts 1 and District 4 have an equal number, three statistically significant differences.

Q. Dr. Lichtman, at Table 12 on page 25, do you summarize your findings regarding homogeneity and political opinion?

A. That's correct. Table 12, for each district, lists the number of statistically significant differences for [776] all respondents, for blacks only, and for whites only, and then just sums those differences for a kind of a rough hewn comparison.

And, again, this tells us what we've been learning all along, as we go through the tables, that Districts 1 and Districts 12 do not emerge as especially heterogeneous with respect to opinion. In fact, District 12 has the fewest number of statistically significant differences, no matter how you arrange it, at five. District 1 is next at seven and, in fact, District 4 has the most statistically significant differences at eight.

I'm certainly not going to say this analysis shows that non-compactness translates here into greater homogeneity, but certainly the analysis does show there's no indication whatsoever that Districts 1 and Districts 12, relative to compact District 4, are heterogeneous. If anything, Districts 1 and 12 come out about the same or maybe even slightly more homogeneous than District 4.

Q. Dr. Lichtman, to this point in your analysis, you looked at the question of homogeneity from three different perspectives. Would you briefly describe for the court your overall conclusion, taking into account each of those three different examinations of homogeneity?

A. Yes. Whether one looks at census data among the districts of the 1992 plan, that's the first we talked [777] about; or number two, census data for the two challenged districts compared to the 1982 plan, is the second; or the third, which is political opinion.

The findings correspond with one another. The findings do not show that Districts 1 and 12 are especially heterogeneous. They do not show that Districts 1 and 12 are indiscriminately combining persons irrespective of either or their material conditions or their political opinions. If anything, Districts 1 and Districts 12 emerge as relatively internally homogeneous districts representing commonalities of interests along the dimensions measured in the study.

Q. Dr. Lichtman, let's move to another topic. Did you also examine the question whether the districts, that is 1 and 12, are distinctive districts?

A. If I can slightly modify the way you put that. I did indeed analyze the question of the distinctiveness of the 1992 districts, and indeed, that analysis does provide individualized information about 1 and 12. But basically, the distinctive analysis that you asked me about is really a whole plan analysis. It does provide information about any districts you want to spotlight, but fundamentally we're looking at all 12 districts of the 1992 plan and ascertaining the extent to which those districts are distinctive.

[778] This time we're looking across districts from one to the other, not within, and we're looking to see the extent to which the districts are distinctive with respect to one another. If you were indiscriminately combining people in districts, the districts should pretty much look similar. If you are combining them in some systematic way, then you would expect to find distinctions socioeconomically, demographically and in terms of opinion, perhaps as well, across the districts.

Q. And what is the value, if any, of creating distinctive congressional districts?

A. In terms of districting, the value of creating distinctive congressional districts in terms of the whole plan is that you are having a set of districts that do reflect the various different interests within the State, and in this case, the State of North Carolina. And you have, then, a congressional delegation sitting in Washington that likewise reflects the differing interests across the State as a whole.

Q. And Dr. Lichtman, would you explain for the court how you went about performing the distinctiveness analysis?

A. Yes. As I said, this analysis pertains to the comparisons of the district as a whole. So we're looking at one district compared to another, or really all 12 simultaneously compared.

[779] The first thing I looked at, again, was material conditions. And the first thing I focused on on material conditions was people's socioeconomic standing, home values, rent values, vehicles, telephones, education, income, poverty. The reason I isolated here socioeconomic —

Q. Excuse me, Dr. Lichtman. Are you referring to Tables 13 and 14 on pages 27 and 28?

A. Yes. Table 13, beginning on page 27, reports the base data. And the reason I focus on socioeconomic variables that are reflected in Table 13 on page 27 is two-fold. Most importantly, a focus on socioeconomic factors enables you to do a systematic analysis of all the factors, because you can rank socioeconomic factors from high to low. It's meaningful to say a district is high on percent college graduates or high or low with respect to its income. And we would rank all of these and

compare the rankings as a way of assessing the relative socioeconomic standing of each individual district.

And then we want to see the extent to which the districts differ, one from the other, with respect to their socioeconomic standing on this array of standard factors that political analysts look at.

Table 13 on page 27 is simply the base data. It simply reports for each district the values for that [780] district as a whole of socioeconomic factors, like home values, rental values, telephones, vehicles, income, unemployment, poverty, education, professional occupations.

So the table, if you read down the table, down the columns of the table, it's the values of that particular variable for all the districts. If you read across the rows of the table, it's the values for that district of all of the particular variables.

And I just did a very simple look at Table 13 just to see the extent to which, in a very simple way, there are absolute quantitative differences among the variables. And I simply looked at the highest value of a variable given for a given district as to the lowest, also, and took a ratio for median home values.

The highest value for any district is in District 4 at 96,000; the lowest value is in District 1 at 46,000, with a ratio of about 2:1, and that those ratios for each variable is reported on the bottom row of Table 13.

And I just took a mean and an average. The average value of these socioeconomic factors in the highest socioeconomic district as compared to the lowest socioeconomic district is nearly 3:1, so there's a substantial spread of socioeconomic values across the district.

[781] I returned to the actual analysis in a more systematic way on Table 14 on page 28 of my report. And what I have done here is I have simply ranked each

district with respect to each variable. That is, if a district is high in socioeconomic standing for a given variable, like the value of homes, it would have a ranking of 1. That would indicate the values of homes in that district is higher than any other district.

Obviously, a ranking of 12 would mean the value of homes is the lowest in that district as compared to all the other districts. And the ranks in between would correspondingly represent intermediate degrees of difference.

And the last row, last column of the table is the mean ranking the average. When you rank a district across all the variables, and I'll discuss that mean rank in one second. There's a very small correction I should mention for the record; it doesn't affect any of the results, but a number got dropped accidentally under per capita income. Notice there's nothing in the very last row. The very last row should be 11. The row before that, for per capita income, should be 7 and the one up above that should be 4. A number just got misplaced and two numbers got moved up, but the mean rank is not affected.

If you look at the mean rank, you can see District 1 [782] stands out. District 1 is ranked last on every single measure of socioeconomic standing. It has the lowest possible mean rank of 12 and, of course, it's 12th among all the districts in terms of its socioeconomic standing.

The next lowest ranking is for the other challenged district, the other minority district, District 12, but there's quite a difference. District 12 has a mean ranking of 10 as compared to a mean ranking of 12 for District 1.

If you looked at the actual values of the socioeconomic variables, you would see there are pretty substantial differences between District 1 and District 12 in the absolute values of those variables. You can see District 9

and District 1 emerge as relatively high status districts with District 9, having a mean rank of 1.5 and District 4, having a mean rank of 1.9.

If we look at the spread of ranks, we see they are spread. If there wasn't distinctions of districts, if people were indiscriminately put into districts irrespective of socioeconomic status, you would find the ranges clustering around the middle, around the 6.5, 7, 6 ranges. But you can see there's quite a spread of ranges.

In fact, the difference between the mean rank for the lowest district, District 1, and the mean rank for the [783] highest district, District 9, is close to the mathematical maximum. The most you could get for the top district would be a mean rank of 1, if it was straight once across, and obviously the lowest mean rank which you can get, which you do get for District 1, is 12. You have straight 12's across, so the differences between the top ranked district and the bottom ranked district is very close to the maximum.

If it was absolutely at a maximum, you would have the top ranked district with a mean ranking of 1 and the bottom ranked district with a mean ranking of 12. We have the top ranked district with a mean ranking of 1.5 and bottom ranked district with a mean rank of 12.

Q. Dr. Lichtman, what, if any, effect could race have had upon the analysis set forth in Tables 13 and 14?

A. Race certainly can have an effect in the analysis set forth here. Two facts that we already discussed pertain to that. One, of course, is that Districts 1 and 12 have the largest percentage, by a fair margin, of black persons in those districts; and number two, that socioeconomic standing is related to race. That is, black persons in North Carolina tend to have lower socioeconomic standing than do white persons.

So, the relatively low ranking of District 1 and District 12 could be a reflection of the fact that they [784] have relatively substantial numbers of blacks in those districts. The spread of the rankings for the other districts would not tend to be affected by that, however, because they are all fairly equal in their racial composition. They are all predominantly white.

So while the racial composition might affect the relative ranking of 1 and 12, it cannot be responsible for the whole set of distinctions we find in Table 14.

Q. Did you take steps, Dr. Lichtman, to control for the effect of race?

A. Yes, I did.

Q. Would you like some water?

A. That would be wonderful.

Q. Dr. Lichtman, are the results of the control for race set forth in Tables 15 and 16 and 17 and 18 beginning on page 30 of your report?

A. Yes.

Q. Would you explain those tables for the court, please?

A. Yes. There are essentially two ways to control for the impact of race. One is a statistical control and the other is a strict control. I kind of, in a rough way, will discuss the statistical control.

I said it's not likely that race could account for the differences in districts other than 1 and 12 because they are all relatively high in terms of white population; [785] there's not much difference among them in racial composition. Therefore, statistically, race couldn't be much responsible for differences among Districts 2 and 11. That's statistical control.

We can go well beyond statistical control here. We can do a strict control. That's unlike the data broken down by county. The census does divide the whole district data by race, and that enables us to go beyond statistical controls and do a district control for race by looking only at the black persons within the districts, and only at the white persons within the districts. And if race is responsible for the distinctions among the districts, we would expect those distinctions to disappear when we look only at blacks and only at whites.

Q. At Tables 15 and 16 on pages 30 and 31, do you look at blacks only?

A. Yes, I do.

Q. What did you find?

A. Okay. Table 15 page 30, again, is nothing more than the base data, the basic socioeconomic data for blacks only reported by district. And again, I did the same kind of thing I did with the data for all residents. I looked at the extent to which the highest ranked district with respect to any of these variables is greater than, in an absolute sense, the lowest ranked district, as would be [786] expected, since we're now isolating a group that shares socioeconomic characteristics, black people.

The differences are not as great but, nonetheless, the districts don't converge. They are still substantial differences, from high to low, in the values of these variables. And on average, even when black persons are isolated for purposes of analysis, on average, the value of these variables for the highest district as compared to the lowest is 2:1, twice as high in an absolute sense.

We then move on to page 31, which is Table 16, and that again ranks the districts one to the other for only the data for the blacks within those districts and several results emerge from the analysis on Table 16.

A. First of all, District 1 still clearly emerges as by far the district with the lowest standing, even when you're comparing the blacks in that district to the blacks in the other districts.

Again, last time you were absolutely at the mathematical minimum with ranks of 12 right across the board. Here, isolating blacks, you have nearly ranges of 12 across the board. They are all 12 except for college graduates, which is 11, which means give a rank of 11.9. That's the lowest you can get in terms of socioeconomic standing, would be a mean rank of 12.

Again, District 9 emerges as a relatively high [787] socioeconomic difference where, with respect to blacks alone with nearly 1's right across the board, it's all 1's and ranks of 2 for a mean rank of 1.3. So even when blacks are isolated, there's a very sharp difference between the mean ranking of the bottom district, close to the mathematical minimum of 12, and top district, which is very close to a ranking of 1. So the rankings do spread even when you look. And they spread, as well, in between even when you look at blacks alone.

The other interesting finding from Table 16 pertains to District 12. When you look only at black persons, the black persons placed within District 1 are different than the black persons placed within District 12. District 1 is a relatively rural district. District 12 is a predominantly urban district and you do seem to be getting differences between the relatively rural black people placed in District 1 and the relatively urban black people placed within District 12, in that once you control for race, District 1 remains far and away the poorest district. But District 12, once you control for race and look at blacks, has black people who are about average with respect to their socioeconomic standing across the State of North Carolina as a whole.

Q. Dr. Lichtman, in Table 17 and 18, do you look at whites only?

[788] A. Yes.

Q. And those are on page 33 and 34. Would you explain those tables, please?

A. Yes. On page 33, Table 17 does exactly the same thing for whites that we just did for blacks. It reports the base data by district by variable for only the whites within those districts. And again, just as a rough hewn test, I looked at the ratio of the highest value of the socioeconomics for per district to lowest value. I found the ratio almost identical to blacks.

So when you isolate whites only, it will be less of a ratio than when you look at the respondents, because they are a group that has certain socioeconomic districts in common, but there are differentiations among white people in the 12th District of North Carolina.

Table 18 on page 34, then, provides the rankings of the districts. In the case of white people only, District 1 does not quite emerge as the district with the lowest socioeconomic standing of whites, but it's close. It has a rank of 10.5 as compared to District 11, which has a rank of 10.8.

So, District 1 is next-to-last among districts in terms of the socioeconomic standing of white; and District 4 clearly emerges by far as the district with the highest socioeconomic standing among whites. It has a [789] rank of 1 for each and every one of the variables, and thus a mean rank of 1 right across the board.

So again there's a spread. You've got some districts with mean ranks of 10. You have District 4 with a mean ranking of 1. So this shows, again, that even when you isolate blacks, there are distinctions among the districts.

And, once again, the white people of District 1 are not the same as the white people of District 12.

While District 1 ranks next-to-last in the socioeconomic status of the white people in District 1, District 12 again ranks right in the middle, has a mean rank of 7.0, which means it is sixth among all districts in the socioeconomic standing of whites.

So when you strictly control for race and look at blacks and whites alone, a couple of findings stand out. One, there's still distinctiveness among the districts, and the other is that the more refined analysis shows differences between the blacks in District 1 and blacks in District 12 and whites in District 1 and the whites in District 12.

Q. Now, Dr. Lichtman, in Table 19 appearing on page 35 of your report, do you look at a different set of indicators?

A. Yes, I do.

Q. Could you tell the court what you are looking at on [790] Table 19?

A. Yes. What I'm looking at there is demographic. I've now moved from socioeconomic to what I call demographic factors for convenience of analysis.

What differentiates these factors from socioeconomic is you can't rank them from high to low and say you have a common ranking that you can combine and compare. We're talking about things like the percentage born in state, the percent who moved in the last five years, vacancy rate, manufacturing, married person, family age, and so on.

So this isn't the kind of analysis where you can rank like you can on socioeconomic standing. But for completeness, I included the district by district demographic data, and I think there are some important factors that

emerge just by looking at the demographic factors. The first difference that emerges focuses on the first column in Table 19, and that is the urban column. That column simply reports percent urban.

Judge Britt: What page is that on?

The Witness: Page 35, your Honor, Table 19. Page 35, the very first column is just —

* * * *

[791] A. I was highlighting the first column on Table 19 on page 35, which is just the percent urban across the various districts. Let me make clear here, this is the census definition of urban. All of the variables I have looked at, all the socioeconomic and demographic variables are as the census reports them. I have done no recalculation, no transformations of any census, so these are all census definitions that's utilized, places of 2500 or more.

And you can see, even utilizing the 2500 census definition, that there are significant differences in the degree of percent urban in the two challenged districts. District 1 is a majority rural district by the census definition. It is 42 percent urban. District 12, however, is the most urban district in the state. It is 86 percent urban, about ten percentage points more urban than District 9, which is about 76 percent urban in its composition.

Q. Dr. Lichtman, have you undertaken to determine the percentage of black citizens in District 12 who reside in urban areas and white citizens in District 12 who reside in urban areas?

A. Yes. I had to do calculations on that because the [792] census doesn't provide such differentiation in its report.

Q. Doctor, does Exhibit 440 set out the calculations you did in that regard?

A. Yes, it does.

Q. Would you explain Exhibit 440, please, to the court?

A. What I was able to do was come up with minimums. That is, the minimum percentage of whites who are urban and the minimum percentage of blacks who are urban. That's the best I was able to tease out of the census data.

It follows a fairly similar procedure. If you look at the first entry on Exhibit 440, it's the total white population, some 230,000. The total rural population in this district is some 75,000.

Q. Again, by the census definition?

A. This is all by census definition. I then make the factual assumption that all the rural population is white. So, in maximizing the number of whites who are rural, minimizing the whites who are urban by the census definition. So, I subtract the 75,000 or so from the 230,000 or so. That gives us 155,594. That's the minimum number of whites who can be urban, since I assumed every rural person was white. I then divided the 155,594 by the total number of whites, and I get 67 percent.

So at minimum, two-thirds of the whites within [793] District 12 live in urban areas, by the census definition. I then used exactly the same procedure for blacks, except in this case, of course, I assumed that all the rural population was black and subtracted the total rural population from the total number of blacks.

I got 237,000 some odd, divided that by the total number of blacks, and I got about 76 percent; 75.9 percent. That's the minimum percentage of blacks in this district who reside in urban areas, as defined by the census. Thus, at least a two-thirds majority of both

whites and blacks by the census definition reside within urban areas within District 12.

Q. Dr. Lichtman, did you also look at the kinds of work performed by people who live in the various districts?

A. Yes, I did.

Q. And is that analysis set forth in Table 20 on page 37 of your report?

A. Yes, it is.

Q. And would you tell the court what that table reports?

A. This takes two groups of categories that the census uses. One is the occupational categories, and that's labeled in the upper left-hand corner of Table 20 on page 37. And it divides it into various categories based upon peoples' occupation, managerial, professional, sales, service, et cetera.

[794] The other is industrial category, what kind of industry are people in. First category, agricultural, fishing for industry, fishing, mining, construction, manufacturing, and so on. For each district, I report, using the census definitions, the percentage of workers who are respectively within each of the occupational categories, and respectively, within each of the industrial categories.

Q. And what do you find?

A. Well, a couple of purposes for this analysis. One was to address the question of, are districts represented by kind of a single industry or occupation? Or, are there manufacturing districts, are there farming districts, are there trade districts, are there professional districts. And if so, does the relative geographic non-compactness of Districts 1 and District 12 mean that somehow they are less representative of a particular occupational or

industrial group than are other districts that are relatively more compact within the State of North Carolina.

Two conclusions emerge from that particular inquiry. The first is that, in a State like North Carolina, with districts as large as 552,000, talking about very, very large numbers of persons, you don't have districts characterized by a single occupational or industrial [795] group, or even generally by even two occupational or industrial groups. Rather, there is considerable differentiation, typically, within the districts, all of them among the occupations and industries.

And secondly, that Districts 1 and District 12, when compared either in the highest single category or in the top two combined categories, do not emerge as especially more diverse in their occupational or industrial composition. So, there is considerable diversity within the districts, and Districts 1 and District 12 do not stand out in this analysis. And the mathematical demonstrations of that are in my report with respect to either their occupational or industrial composition.

Second inquiry was to focus on whether or not distinctions emerge from District 1 as compared to District 12. Whether or not — not necessarily in the concentration, but in the types of industries that are represented in what's been presented as the relatively rural District 1 as compared to the relatively urban District 12.

And I think, before I get into that I should note that as Dr. Al Stuart pointed out in his report, you would not necessarily expect those differences to emerge in differences in manufacturing because manufacturing in the modern world does not neatly follow urban/rural lines. He [796] points out there's a lot of manufacturing in the relatively rural District Number 1.

So I'm looking for a couple of other types of differentiation here. The first one is between industrial category number 1, the agricultural, fishing, forestry and mining.

This is a relatively small category across the state. You are talking about only a very few percentage of workers who were combined in the agricultural or extractive industries.

Nonetheless, given that you are dealing with a small percentage, there's a distinction between the relatively rural District 1 and the relatively more urban District 12. If you will look under industry, and under agricultural, fishing, forestry and mining, at District 1 it is 6 percent. That's tied for first place. It has the largest percentage of workers, along with District 3 in agricultural and extractive industries.

Whereas, if you run your finger along the row to District 12, it is tied for last, at 1 percent, tied with District No. 9. It's about as low as you can get in that particular category. So, there are differences, then, in agricultural and extractive industry.

The other thing I was looking at is sort of what I might categorize as the post-industrial type of groupings where the more dynamic economies are moving, and that's in [797] the transportation, communication, trade, finance, personal service and professional service. There's a bunch of different census categories that I roughly grouped together in kind of this post-industrial category to see if there are distinctions between what's been described as the more dynamic District 12 and the less dynamic District 1. And indeed, differences do emerge.

If you sum together those five census categories, District 1 has 54 percent, about, of its workers in those categories. That ranks at 11. It's next-to-last in its percentage within those categories. Just behind District 11, which I believe is another rural — excuse me, District 10, another rural district, which is at 52 percent. In contrast, District 12 ranks second. It has 67 percent of its workers in the transportation, communication, trade,

finance and service areas, ranking second only to District 4.

So, not only when you look at agricultural and extractive industries, also when you look at this post-industrial category, District 1 and District 12 are not identical but they differ along lines that you might expect from a more dynamic urban economy as opposed to a less dynamic, more rural economy.

Q. Dr. Lichtman, have you looked at the question of whether this distinctiveness that appears to be emerging [798] is occurring by chance?

A. Yes, I have.

Q. Where do you do that, Table 21 on page 41?

A. Yes, it is.

Q. Would you explain Table 21 to the court, please?

A. It has some fancy looking statistics, but it's really a fairly simple analysis. There are two kinds of distinctions that we can look at for districts within North Carolina. One is the kinds of distinctions we are pursuing in this set of tables on distinctiveness. The differences from one district to another with respect to, most importantly, socioeconomic, but also demographic factors.

Now, as we know, there's also differences within the districts. The districts are not completely homogeneous, but they will differ, as we already saw, with respect to the socioeconomics and demographic variables within.

If I could draw a simple analogy. You have two classes in a school and one class gets a certain average grade and the other class gets a slightly higher average grade. Well, there will be differences in the grades the individual students get within each of the two classes. And what we're testing here is whether the differences from one district to another are sufficiently great, relative to the differences within the districts to be [799] able to say

that those differences from one district to another are systematic rather than the result of chance or random variation, rather than just throwing up the people and letting them fall willy-nilly into districts.

It's the same thing with the two classes. If we observe, there's a different grade in class one as compared to two. We want to look at the individual students to make sure that relative from the differences to one student to the other the differences in the grades between the two classes is great enough to be statistically significant. Those results of a statistical significance test are reported in Table 21 on page 41. And the relevant column is statistical significance.

As I indicated previously, conventionally you would accept a result as statistically significant if the statistical significance was .05 or below, corresponding to a five in 100 or lower probability of getting the results by chance.

To sum up, simply for every one of the variables looked at, there is more than enough difference from one district to another to be able to reject the hypothesis of chance or random variation across districts at a level of statistical significance far more stringent than the .05 level. So we then accept the alternative hypothesis: the differences we have just been looking at from one district [800] to another are far too great to reflect chance or random variation from one district to the other, but the distinctiveness of these districts is systematic.

Q. Dr. Lichtman, when you were looking at the question of homogeneity of districts, you compared districts 1 and 12 in the '92 plan with the 1982 districts. Did you also do that in examining the question of distinctiveness?

A. Yes, I did.

Q. And does that analysis appear beginning with Table 22 on page 42?

A. Yes, it does.

Q. And would you explain to the court what you were looking at here?

A. In our previous analysis, we were kind of looking at the plan unto itself, testing whether or not there were differences; testing whether there as still difference when you looked at blacks and whites separately, looking at distinctions between District 1 and District 12. But it was all part and parcel of the same plan, as was the analysis of statistical significance.

What I sought to look at in the next series of tables was the extent to which the 1992 plan was distinctive from one district to another, as compared to the relatively geographically more compact 1980 plan. Did the relatively more geographical compactness in the 1980 plan mean that [801] the 1980 plan was more distinctive from one district to another than the current plan.

Q. And what did you find, and at which tables are — or which tables are we looking at?

A. We begin the analysis on page 42 with Table 22, which is nothing more than the base socioeconomic data. It's the same socioeconomic data from the '90 census that we reported for the 1992 plan. This is the same set of factors for the 1980 plan and U.S. census of 1980 so I reported the base data. And I looked at, likewise, the ratio, just as I did for the 1992 plan of the highest value here for each variable with respect to the lowest value for each variable, and found on average the value of the highest district for a socioeconomic variable for the 1982 plan was 1.8 times, about 2:1 as compared to the district with the lowest value.

I then moved on to do exactly the same kind of ranking for the 1980 plan that I did for the 1990 plan. That is, to see the extent to which when you look at ranks

you find there's a spread. Is there a spread from a mean ranking of 1 or close to 1 all the way up to a mean ranking of 12 or close to 12, or are the districts less spread out with respect to their mean ranking?

The data for all districts of the 1982 plan and for all of the socioeconomic factors is reported in Table 23 [802] with a set of mean rankings on the last column of Table 23. Those mean rankings may not mean a lot by themselves, but we do begin to see some meaning in this analysis when we compare the mean rankings from the 1982 plan with the mean rankings from the 1992 plan to see which set of mean rankings the 1982 plan — or the 1992 plan is more indicative of distinctiveness from one district to another.

That is, which shows the greatest spread among mean rankings. And I did that analysis in two ways. And the results are reported on the bottom of Table 23.

First, I computed the same kind of standard variability or homogeneity score that we have been talking about throughout this analysis. And here, because we're looking at distinctions from one district to another, we're looking to see which plan has the highest score. That is, which plan, when you compare the districts, represents a more distinctive set of districts.

And you can see that despite the greater geographic relative compactness of the 1982 plan, the 1992 plan actually emerges as more distinctive with the distinctiveness score of 50 as compared to a distinctiveness score of 46 for the 1982 plan.

* * * *

[803] Q. Dr. Lichtman, when we recessed, you were explaining Table 23. Will you continue with your explanation of that, please?

A. Yes. I was looking at Table 23 to see if the relatively more compact 1982 plan emerged as more distinctive. And I first looked at the variabilities among the ranks and found that it did not. That's the first two rows on the bottom of Table 23.

The next two rows perform a similar analysis, except in this case we look at the difference between the highest ranked district and the lowest ranked district. The greater that spread, the more distinctive the districts. And again, 1982's plan does not emerge as more distinctive. To the contrary, the 1992 plan has a spread of 10.5 compared to a spread of 78 for the '82 plan.

Final set of comparison was not to look at the ranks, but to look at the absolute values of the socioeconomic variables and to look at the ratios. We found, again, the 1992 ratio was greater, 2.8 as compared to 1.8, indicating a greater degree of spread in the value of socioeconomic factors for the 1992 as compared to the 1982 plan.

Q. Dr. Lichtman, could race have affected this result?

[804] A. Yes. Since we're looking at distinctiveness across districts, it's certainly quite possible that the way in which you combine blacks and whites into districts can have an affect on distinctiveness because, as we already indicated, race is correlated with socioeconomic factors.

Q. Did you undertake any analysis to see whether or not that occurred?

A. Yes. I, again, performed strict controls — that's a hard thing to say — looking separately at blacks and looking separately at whites for my comparison of the 1982 and 1992 plan. In other words, entered the same analysis for blacks and whites separately that we just looked at for all residents of the two sets of plans.

Q. Do the results of those analyses appear at Tables 24 to 28, beginning on page 45 and concluding on page 59 of your report?

A. The racial differentiated results conclude on page 49.

Q. Would you explain what the tables show for the court?

A. I don't think, without going into the detailed mathematical analysis of each table; they show essentially the same thing. Table 25 on page 46 does the analysis we just went through, except it does it for blacks alone and again, the results do not show that the relatively more compact '82 plan is more distinctive, strictly looking at [805] the black populations. To the contrary, again, the 1992 plan emerges as more distinctive, although perhaps not as much as when you look at all respondents.

Q. And what about when looking at white citizens only?

A. Yes. Table 27 on page 48 does the same analysis for the white population only. And again, it does not show that the relatively more compact 1982 plan is more distinctive.

The differences for whites are not very great; they are quite similar. But on every indicator, the 1992 plan does emerge as slightly more distinctive than the relatively more compact '82 plan.

Q. Now, Dr. Lichtman, did you look at this question of distinctiveness from a statistical significance, in respect.

A. Yes.

Q. Is that at Table 28 on page 50?

A. Yes, it is.

Q. And would you explain to the court what you found in regard to statistical significance and distinctiveness?

A. It's kind of a somewhat different way of looking at distinctiveness, but tapping into essentially the same phenomenon. What I did, I looked individually at the distinctiveness of each separate variable. Before I kind of combined all the variables to look at the [806] distinctiveness of the plans as a whole. Now, I isolated each plan for each of some 20 separate variables and computed our same old homogeneity score. And now, again, we're looking to see which plan spreads out the values of these variables more from one district to another.

The first column of Table 28 scores for the '82 plan. The second column is the scores for the '92 plan. And the final column indicates the direction of difference. A plus, indicating the 1992 plan is more distinctive; a minus, indicating the '82 plan is more distinctive.

There is a little summary down at the bottom of the table and it shows that preponderantly the differences are positive. That is, the 1992 plan preponderantly emerges as more distinctive than the 1982 plan, and that those results are statistically significant. You wouldn't get that kind of preponderance just by chance at a level of statistical significance, yet beyond the .05 conventional level.

Q. Dr. Lichtman, when you were looking at the homogeneity issues, you looked at political opinion. In looking at the distinctiveness issues, did you also look at political opinion?

A. Yes, I did.

Q. Would you explain to the court what you did in that [807] regard?

A. Yes. I already explained the nature of the political data that I obtained from Market Wise. Since distinctive-

ness is a whole plan concept, we are much more limited in our analysis of distinctiveness for the political opinion data. And the reason is simply that we only have data for three districts, Districts 1, Districts 4 and Districts 12, and we don't have comparative data matched to the districts of the 1982 plan.

So we can only gain limited insight into distinctiveness from looking at the political opinion data. Nonetheless, we can still apply that data to some degree to see, at least among these districts, the extent to which respondents to the survey differ in their political opinions.

Q. And are the results of your analysis in this regard set forth beginning with Table 29 on page 52?

A. Yes.

Q. And would you explain those tables to the court, please?

A. Yes. What Table 29 does with respect to the same set of questions to which we've already been making reference, is compare the opinions across the three districts and then again, using the same chi-square test statistic, determine whether or not there is sufficient [808] differentiation from one district to the other in order to conclude that you can reject the chance hypothesis. That is, reject the hypothesis that the observed differences in opinion are random and instead accept the alternative hypothesis that in this sample the districts of differentiation, in fact, represents something real or systematic among the districts.

And the relevant data is in the last column of the table statistical significance. And it shows at a level of statistical significance well beyond conventional levels for all questions but one. There are statistically significant differences in opinion among these three districts.

One small correction; doesn't affect the final analysis, but it does affect the base data. There's a — if you will

look at the row for 13 and 14, accidentally the row got duplicated. 13 and 14 have the same data reported. In fact, the data on District 12 should be moved down, the 30.4, the 46.3, and the 33.6 should be moved down to District 13, and the correct values for District 12 are 28.8, 50.1 and 37.8. The chi-squares statistical significance are as they stand; there was just a duplication of the underlying data.

Q. And did you look at statistical significance for black and white citizens separately?

[809] A. Yes, I did. And we found some important differences when you isolate blacks separately and whites separately.

Q. Are you looking at Table 30 on page 53, Dr. Lichtman.

A. Yes. Table 30 on page 53 isolates political opinion only for the white respondents to the survey, and you get results much like that which we saw on Table 29, even slightly stronger.

For all questions, there is sufficient differentiation in political opinion among whites across these three districts. To find statistical significance and reject the chance or random hypothesis, this stands in sharp contrast for what we find for black respondents, where there's essentially no statistical difference between — across the three districts.

Only one question emerges as statistically significant. That could be when you are dealing with 14 questions purely as a result of chance to black political opinion does not vary very much from one district to another. Differences in opinion are primarily being driven by differences among whites for the most part.

Q. And turning to Table 31 on page 54, Dr. Lichtman, would you discuss that table with the court, please?

A. Yes. What I sought to look at in kind of a complicated table, a lot of stars on it, is the following question. Given that there are differences that we [810] already documented, sharp ones, between blacks and whites in political opinion among all the respondents, are those differences relatively muted within District 1 and within District 12.

That is, given that we know there are differences between blacks and whites, are those differences somewhat minimized when we look only at the blacks in District 1 compared to the whites in District 1, and when we look only at the blacks in District 12 compared to the whites in District 12. That is, given that there are differences of opinions across the races within the two challenged districts, relatively more homogeneous than you would expect by just looking at blacks and whites overall.

What I did was I compared the blacks and whites in District 1. That's the first column. And then I compared the whites in District 1 to the whites in District 4. That's column 2. Then I compared the blacks and whites in District 12 and then I compared the whites in District 12 to the whites in District 4.

In other words, first for District 1, I was testing the relative difference between whites and blacks in District 1 as compared to whites only in District 1 and whites only in District 4. And I performed the identical comparison for District 12. And what I essentially found was this: that the whites in District 12 had about as [811] much commonality of opinion with the blacks in District 12 as the whites in District 12 had with the whites in District 4. Similarly found, with respect to District 1, that the blacks in District 1 — let me start again.

The whites in District 1 had about as much in common in terms of political opinion with the blacks in District 1

than the whites in District 1 had with the whites in District 4.

So, in other words, the racial differences between political opinions were relatively low when you looked at the blacks and whites internally within District 1 and within District 12. The whites in these two districts had about as much in common with the blacks in their own districts as they did with the whites in the control District Number 4.

Q. Dr. Lichtman, you explained the series of books and distinctiveness. Would you provide the court with your overall summary on the question of distinctiveness based on this series of books of distinctiveness?

A. Yes. Several conclusion follow: One, that the congressional plan of 1992, despite apparent lack of geographic compactness, is a distinctive plan, one that reflects various differences particularly of a socioeconomic nature across the State of North Carolina. That it is relatively distinctive, even compared to the [812] apparently more geographically compact plan of 1982 and that Districts 1 and District 12, despite being virtually identical in terms of their black populations, are indeed distinctive, one compared to the other, with respect to the standing of the blacks and the whites in those two districts and with respect to their urban/rural nature and with respect to their industrial nature as well.

Similarly, we found, to whatever limited extent we could do in opinion analysis, that there were differentiations between the districts, particularly among the white respondents. And finally, on opinion, we also found a relative degree of commonality between the whites and the blacks within the two challenged districts.

Q. Dr. Lichtman, let me turn to another area. As a historian, have you undertaken to look at the legislative records to make a determination as to whether or not

the legislature was concerned with these commonalities that you found?

A. Yes, I did.

Q. Would you tell the court how you did it?

A. I first considered the issue of did the legislature have the information necessary to make socioeconomic differentiations across the State. Obviously they couldn't possibly have this book since this book analyzed districts that weren't created yet. They didn't even have [813] available to them the underlying base census data that this book is constructed from; that is, the census tract, the block group and block data differentiated by socioeconomic or demographic factors.

Nonetheless, based on my experience as a political historian analyst, it was my conclusion that they did have —

* * * *

[814] A. Yes. I was going to say legislators, particularly members of a state legislature, by the very nature of their jobs, and even more pointedly by the very nature of their political survival, have detailed knowledge, particularly within their own districts, of the basic socioeconomic, demographic, and political characteristics of their district.

That doesn't mean they could translate that down into some particular unit of census geography, like a block, but that's not necessary to construct districts with a concern for commonality of interest. You don't have to refine it to that level. You basically have to know what are the areas that share socioeconomic, demographic, and political characteristics. And if a legislator is to survive within their own district, they need to know that.

As I cited in my report, there apparently appears to be no dispute over that question between myself and expert

witness for plaintiffs, Dr. Ronald Weber, who was cited as an expert in this same area that I am discussing.

In addition, as a political historian and political analyst, I know that legislators deal with continuing issues and legislation that requires knowledge of demographics and socioeconomics, tax burden, school funding, transportation, communication.

You couldn't do the daily business of a legislature [815] without having this kind of knowledge. And legislators who tend to be very local in their orientation couldn't survive politically without this knowledge. That's what I considered, could this be done if they didn't have this kind of data or have an expert to do the statistical analysis; my conclusion was they could.

* * * *

Q. What was the next thing you looked at in this regard, Dr. Lichtman?

A. Next thing I looked at was the actual legislative record itself, particularly the debates and statements of legislators at the time of the redistricting process, with a particular focus on the passage of the second plan, the one that's actually in dispute in this matter.

And as a political historian looking at these issues — let me make it clear, I'm not looking to see if the legislature was of one mind about commonalities of [816] interest, legislatures are never of one mind about issues like this.

Rather, my purpose as a political historian was to look at the record at the time and see whether or not, preserving communities of interest or commonalities of interest, however you might want to phrase that, was an element of the debate, the discussion was advocated as part of the process itself that produced this plan.

Q. And what did you find, Dr. Lichtman?

A. What I found was that, indeed, while there were, as you would expect, disputes and disagreements over how best to reflect commonalities of interest within the legislative plans, that this was certainly something that was discussed, debated, and advocated as part of the legislative process. And that, indeed, there was some pretty specific and detailed demographic data presented, especially on the question of urban/rural and the belief of legislators that by creating a more rural district, as compared to a more urban district, through that process you were, in fact, reflecting commonalities or communities of interest within the State of North Carolina.

This was argued and discussed, but it was certainly part of the process, and was certainly one of the reasons advocated for the particular plan that emerged from that process.

[817] Turning to another area, Dr. Lichtman, have you undertaken to examine the extent to which voters participated in the congressional elections in 1992?

A. Yes, I have.

Q. And would you please explain for the court why you undertook to look at the question of voter turn-out?

A. Because it was my understanding that the issues of representation were issues that were being considered in this matter, and the fundamental representative connection between a member of Congress and the residents of the district is voting. And therefore, if one was to look at representation and the possible affects of this plan, and in particular and relative lack of compactness in Districts 1 and Districts 12 on representation, that the significant test of that would be to see whether or not Districts 1 and District 12, in this, the first election under the plan, or in general, really, the lack of compactness within the North Carolina plan reflected in District 1 and District 12, but obviously reflected in

other districts, as well, has had a depressing affect on the participation of voters in congressional elections.

Q. Dr. Lichtman, would you explain to the court how you undertook to examine this question of voter turn-out?

A. Yes. I looked at what is known as the fall-off rate, rather than focusing strictly on the turn-out in [818] congressional elections as a percentage of the voting age population.

The overall turn-out, that is how many people show up at the polls relative to how many people in the population are old enough to show up at the polls, is a function of many factors; education, mobility, income, all of that which have nothing to do with the configuration of a congressional plan, are critical determinants of the overall level of turn-out.

What I focused on, for the State of North Carolina, was the difference between the presidential turn-out, which is not responsive to the configuration of the congressional plan, and the congressional turn-out, which comes about as close as we can come in this kind of analysis to isolate the effects of the plan itself.

And I sought to see whether the relative lack of geographic compactness within the North Carolina plan has had an effect of undermining participation in congressional elections relative to participation in presidential elections.

Q. And are the results of your first look of that reported in Table 40 on page 61?

A. Yes.

Q. Would you explain that table to the court, please?

A. Table 40 on page 61, looks for the state of North [819] Carolina, at this kind of fall-off rate, the difference

between congressional turn-out and presidential turn-out.

If you look at the column for North Carolina, you see the difference is about three percent. About three percent more voters turned out in the presidential election as compared to those who turned out in the congressional election. Or, to kind of turn it around, about 97 percent of those who participated in the presidential election in North Carolina also participated in the congressional elections.

This is a significant finding on its face. Just on its face, there is a rather minimal fall-off. Almost all of those who participated in the presidential election in 1992 in North Carolina also participated in the congressional election. By way of comparison, the national fall-off rate is somewhere around eight percent, so you are talking about a fall-off rate of well under half; about a third of the national fall-off rate.

I performed, however, further comparison. I looked at the fall-off in four neighboring states: Tennessee, Georgia, South Carolina and Virginia. And I then used the measure of geographic compactness that have been presented by experts for plaintiffs in this case, and sought to see if there's some relationship between the geographic compactness of these plans and the fall-off in [820] these various states.

Before I get to the detail analysis, you can see right off the fall-off in North Carolina is the lowest. It is below that of any of these other neighboring states. Georgia is close, but even Georgia has more fall-off and Virginia, South Carolina and Tennessee have much greater fall-off rates than that of the State of North Carolina, even though, when you look at all three of the measures of geographic compactness that have been presented in this case, North Carolina ranks last on all of them.

In other words, we're getting the opposite relationship we'd expect if a lack of geographic compactness within a state was driving the relationship between the congressional turn-out and the presidential turn-out.

If we turn to the next page, Table 41, it provides rankings which clearly show the lack of correspondence between geographic compactness within North Carolina and fall-off. If we look at the fall-off percent, North Carolina is first. It has the lowest fall-off of any of its neighboring states, yet it is last on all measures of geographic compactness. Whether dispersion, perimeter, or population, North Carolina has the least geographically compact plan, but it also has the lowest fall-off percentage, and with respect to most neighboring states, [821] by a very, very wide margin.

Q. Did you look at the question of roll-off from another perspective?

A. Yes.

Q. What was that perspective?

A. That perspective is reported in Table 42 on page 64. This was, rather than do a comparison with other states or with national levels of fall-off, I sought to do a comparison within the State of North Carolina to the relatively more geographically compact 1982 plan, and in particular, to the last, most recent presidential election conducted under the 1982 plan to see what the differences might be.

And we could see that fall-off was substantially higher, not lower, in 1988 as compared to 1992. In fact, was approximately more than twice as high in 1988 as in 1992. Now, overall fall-off was greater nationally in '88 as compared to '92, but the differences between '88 and '92 are much greater for North Carolina than they were for the nation as a whole.

So, not only aren't you finding, when you do comparisons, that geographic compactness is not undermining voter participation. To the extent the results show any relationship, they're showing a relationship in the opposite direction.

[822] I'm certainly not concluding from this that lack of geographic compactness promotes voter participation. All I'm concluding is there's no indication from the evidence that lack of geographic compactness has the effect of undermining voter participation.

That's true just from the low number on its face of 2.8 percent. That's also true with the comparisons from other states or comparison with the '88 election.

Q. Dr. Lichtman, in your table on 42, the 1988 elections, you were looking at the last set of elections under the 1980's plan?

A. Yes.

Q. And for the '92 elections, you were looking at the first set of elections?

A. Yes.

Q. Doctor, have you also examined for us the question of the extent to which citizens contact their representatives in Congress?

A. Yes. We used our survey data to see to what extent, since the last election, within each of the three districts that we were able to study, respondents reported having had some contact with their congressman, that's self-initiated contact.

Q. Would you explain to the court how you went about doing this?

[823] A. This was self-reporting by the individual survey. We then divided the responses into congressional Districts 1, 12 and 4, and we also separated the responses by race.

So we looked at contact rates for whites within the districts and contact rates for blacks within the districts. It's very important to make that separation because studies have shown that contact rates are very closely tied to peoples' socioeconomic standing, education and income, and there are sharp differences in the contact rates of whites and blacks reflecting differences in socioeconomic standings.

So, we examined for the contact data, the contact rates of whites within each district and the contact rates of blacks within each district.

Q. Are the results set out in Table 43 of page 66 of your report?

A. Yes.

A. Explain that table for the court, please.

A. Yes. The first row of Table 43 reports the percentage of white respondents contacting their congress person in Districts 1, 12 and 4.

The second row of the table reports the percentage of blacks contacting their congressman in the same set of districts.

And the final row of the table reports the ratio of [824] white to black contact. That is, by what proportion or what ratio is white contact greater than black contact. The higher that ratio, the greater the differentiation between white and black contacts. That's the data reported in that table.

Q. What does the table show?

A. First, with respect to white respondents contacting the congressperson, it shows that in District 4, that has the highest percentage of white respondents contacting the congressman. Which is not surprising, given that District 4 has Congressman Price, a long-term incumbent

in that district and is a far more affluent district, even for whites, than District 1 and District 12.

Nonetheless, the rates of contact in District 1 and District 12 for whites are not markedly different from that for District 4. They are lower. 21.4 percent for District 12 and 18.5 percent for District 1.

For black respondents, again, District 4, which likewise for blacks is relatively more affluent and has the long-term incumbent, has a contact rate of 17.6 percent. It drops down. And the differences on black contact is somewhat greater for District 4 as compared to District 12 and District 1, with a 12.8 percent contact rate of District 12 and 8.3 percent contact rate among black respondents for District 1.

[825] Finally, we turn to the finding of where the differentiation is greatest for the ratio of white to black contact. I think this is relevant to an issue that's been raised, and that has to do with the correspondence between the races of the constituent and the race of the congressperson.

Districts 1 and Districts 12, although represented by new congresspersons, are both represented by black congresspersons. District 4 is represented by a white congressperson. Yet, the fall-off between contact by whites and contact by blacks is least in District 4, which has a white congressperson, and greatest in District 1 and Districts 12 that have a black congressperson.

In other words, for District 1, the ratio of white to black contact is over 2; for District 12 it's about 1.6; and for District 4 it's the lowest, 1.4.

In other words, the ratio of the contact by whites as compared to the contacts by blacks is lowest in that congressional district represented by a white congressperson. So whatever is driving the relative lack of contact by blacks as compared to whites, it is not the

race of the congressperson. And indeed, among whites overall, as we saw, there's not much differentiation based upon the race of the congressperson, with relatively small differences between Districts 1, 12 and 4, especially in [826] light of the fact that District 4 has that long-term incumbent and is a more affluent district.

Q. Did you undertake one final analysis for us?

A. Yes.

Q. Is that analysis in Table 44 on page 69?

A. Yes.

Q. Would you explain to the court what that's about?

A. Yes. That brings us back, in a sense, to this issue of commonalities of interest. We examined extensively early on the extent to which the current plan has districts that represent commonalities of interest is distinctive, and the extent to which the district that was created as an urban black district differs from the district that was created as a rural black district.

So what I looked at was in this plaintiffs' alternative plan, which I believe is this plan up on the chart here, labeled the Shaw III Plan. Does that plan, to the best of our ability to analyze it, preserve the urban/rural distinctions that I believe were intended by the legislature and that I believe I reflected in the many analyses that I performed earlier.

What we had to do here was match, since we didn't have this data back for the Shaw III Plan. We had to match census tract and block group data, which identifies urban and rural residents to the two minority districts of [827] the Shaw III Plan, which is the rural District 1 and the relatively more urban District 3.

We were able to do it for about 92 percent of the population within District 1 and 87 percent of the population within District 3, so the great bulk of the popula-

tions of the two districts are included within this analysis.

And what Table 44 shows in its first panel, the upper panel, is that when you look at plaintiff's District 1 as compared to plaintiff's District 3, it does not preserve the degree of rural/urban differentiation based on the census definition that is preserved within the current plan.

The current plan and the alternative plan have about equally rural districts; 42 percent, 41 percent. No significant difference there. But they differ sharply, to the best of our ability to analyze it, in the urban district. The State's plan is 86 percent urban, the plaintiff's alternative District 3 for the 87 percent we could measure is only 67 percent; 20 points less urban than the State's plan District 12.

Even if we were to assume that all the remaining 13 percent that we couldn't match was strictly urban, that would still — that's a counter-factual assumption; that would only move plaintiff's alternative District 3 up to [828] about 71 percent, still well behind the urban percentage of the State's plan District 12.

So, to the extent urban/rural differentiation is fundamental to the State's plan, that same degree of differential is clearly not preserved within plaintiff's alternative plan, and thereto a majority minority districts.

Second panel of Exhibit 44 simply looks at the racial composition of the State's plan and the alternative plan. And the main point I want to make here is both with respect to the State's plan District 1, which is the first row of the second panel, and state's plan District 12, there is a majority black population. And based upon Dr. Richard Engstrom's ecological regression, analyses of racially polarized voting, the black populations within North Carolina are highly cohesive politically. And we also saw they shared political interest from the opinion

data we were able to muster with respect to blacks in North Carolina.

However, while plaintiffs' alternative District 1 does include a black majority, plaintiffs' alternative District 3 depends upon a combination of blacks and Native Americans, and some of other races, to form a voting age majority of minorities.

And as we likewise saw from Dr. Richard Engstrom's [829] reports, particularly with respect to primary elections, there's not the same kind of commonality of political behavior between blacks and Native Americans as there is within the black population itself.

So again, to the extent there's a concern to create districts where the minority group shares a commonality of political choices and political opinions, that seems to be better represented in the existing plan as opposed to the relatively more compact alternative plan presented by experts for plaintiffs.

* * * *

[829] Q. Dr. Lichtman, did you participate in any way in the legislative process or the redistricting process that lead to either Chapter 601 or Chapter 7?

A. No.

Q. Have you ever drawn a congressional redistricting plan?

A. No.

[830] Q. When was the socioeconomic analysis which you based your report, Doctor?

A. I can't hear you.

Q. When was your report — when was the analysis on which you based the tables in your report conducted?

A. The last several weeks and months.

Q. And what data was that analysis based upon?

A. Primarily two data sets; one is the census report on the 1992 congressional districts and the census report on the 1982 congressional districts. And, of course, the survey of opinion that I also cited, as well as some, in a minor way, some political data.

Q. The survey that you cited was conducted when?

A. 1993.

* * * *

[850] Q. Dr. Lichtman, do you see the data listed under District 12?

A. Yes.

Q. Is it true that that data indicates that 6 percent of those polled identified Mel Watt as their congressman?

A. Yes, sir.

Q. In District 12?

A. Yes.

Q. Does it also indicate that 6 percent of those polled [851] in District 12 believe Jesse Helms was their congressman?

A. I don't know, let me find that. 4 to 6.

A. 6 on the total, right?

Q. And does it also indicate that of the respondents in District 12, 8 percent believed Alex McMillan is their congressman?

A. Yes, 5 to 8, depending on whether it's black or white.

Q. And those congressmen, Doctor, had been in office almost a year at the time this poll was taken?

A. I don't believe Jesse Helms is a member of Congress, maybe the Senate.

Q. 6 percent of the voters in District 12 apparently do. Dr. Lichtman, the incumbent in District 12 had been in office for approximately a year at the time the poll was taken?

A. Close to it, not quite.

Q. You believe that, given the length of incumbency and in light of those answers, that this has no significance with respect to representational issues?

A. Let me explain my answer. You didn't give us the rest of the story, which is the recognition for Eva Clayton.

Likewise, in a district that plaintiffs have identified as a textbook example; geographic, lack of [852] compactness, in a district that has been criticized for being divided into more media markets than any district in the State, in a district that splits and combines more counties by far than any district in the State. The very same information that on this very same table that you reported to me shows 32 percent, 30 to 34 percent of the respondents in District 1 recognized Eva Clayton as their member of Congress. That's an extraordinary recognition level for a first-term congressperson in a brand new district who had a relatively uncontested general election.

Therefore, I cannot, from this data, make any conclusion that county splits, lack of geographic compactness or division of media markets seems to be the critical differentiation between recognition. To the best I can differentiate, Eva Clayton — and one is, quite frankly, higher than you would expect, is that Eva Clayton had tightly contested primary elections. And the one study we know about, Dr. Niemi's study, points to the importance of the media studies and Mel Watt did not have those same kind of, in contrast, have the same contested primary elections.

* * * *

[866] Q. Okay, Mr. Watt. Now, with respect to the table that you discussed from the poll, percentage of respondents contacting congressmen since the last election. When that question was asked, was there any way to determine whether [867] or not the person responded was, in fact, accurate about who that person's congressman was?

A. No.

Q. Now, isn't it true, also, that, according to the poll that's been referred to, twice as many people in the 12th District thought that Mr. Coble was their congressman as thought that Mr. Michaux was?

A. I don't have that.

Q. Or Mr. Watt was?

A. I don't have exact recollection of whether that was correct.

Q. Could you check?

A. Yes, sir.

Q. Pardon me?

A. Yes.

Q. So that was 12 percent?

A. Approximately.

Q. And how many — what percent thought Mr. McMillan — that Watt was there congressman?

A. I think 5 to 7. I can look. 5 to 8.

Q. So that roughly 20 percent of the people who responded misidentified the congressperson and identified a congressperson from a surrounding area; would that be correct?

A. Close to in the high teens.

[868] Q. And then there were a variety of others who were mentioned as representing the 12th District in this telephone poll, weren't there, including Mr. Helms?

A. There were a few others.

Q. Like who, and the percentages?

A. Half a percent for Steven Neal. We already went over Jesse Helms, 4 to 6 percent.

Q. When you say 4 to 6, what do you mean?

A. It's broken down by race in black and white. Steve Neal 5, Faircloth something under 1, Clayton something under 1, Valentine something around 3.

Q. Now, doesn't this inability to correctly identify the congressional representative indicate some confusion on the part of the respondents?

A. Yes.

Q. With respect to the respondents, could you tell me whether those were selected to be registered voters or were they selected at random from a telephone list or how were they selected?

A. They were not necessarily registered voters. They were people who were eligible to vote. Adult respondents randomly selected in the congressional districts.

Q. And of the respondents, after making allowance for the erroneous answers, was it true in the 12th District, 64 percent did not know at all who their congressperson [869] was?

A. I would question your characterization of that. It's not didn't know at all, it's couldn't recall. This was a recall question, where they have to name it as opposed to picking it from a list. 64 is not correct. It's somewhere between — it's 44 for whites and 64 for blacks, so somewhere in the low 50's.

Q. Then, with respect to the percentage of white respondents in District 12 who had contacted the congressman since the last election, which is 21.4 percent, isn't it true that a substantial number of those may have actually been contacting the wrong congressman?

A. It is possible; we don't know. They may have contacted the right congressman and not recalled the name at a later time.

* * * *

[890] Q. You are familiar with geographical compactness?

A. Yes.

Q. Wouldn't it be true, without reference to other studies you, yourself, would readily come to the conclusion this is not geographically compact under the current plan?

A. I would say relative to other plans, this plan appears to be less geographically compact, yes.

Q. Would that be true with respect to other plans in any of the other states you are familiar with?

A. I don't know about any of the other states, but it's true with respect to the states I looked at, specifically, and probably with respect to most states.

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TESTIMONY OF MELVIN WATT

April 4, 1994

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[918] Q. In your role as campaign manager, you had occasion to review the election returns for those elections?

A. Yes, I did.

Q. And, were you able to draw any conclusions about the percentage of white vote that Harvey Gantt received in those elections?

A. Yes, I made a detailed analysis every time a campaign was over, the vote breakdown by precinct, by race and used very conservative assumptions. And I can tell you that Harvey Gantt, despite his popularity in Charlotte, never got 50 percent of the white vote in any election that he ran in.

Q. Now, turning to his 1990 senate campaign, what factors influenced Harvey Gantt's decision to run at that [919] time?

A. Well, obviously, he's a very impressible guy. He called me one day said, look, I feel I'm qualified for this position, as he told me back in 1979 when he decided to run for mayor. And I kind of looked at him and thought he was crazy. He said, I feel like I'm better qualified than the person I would be running against and basically then we started looking at the numbers to see if it made any sense at all.

Q. Did race play a factor in that campaign?

A. Yes. I think it played a factor in a number of different ways. First of all, we got a lot of really hateful mail and phone calls. We got death threats from a group that purported to be the Ku Klux Klan who threatened to blow up a restaurant in which Harvey was speaking.

We got very concerned, without creating a public perception of concern for Harvey's safety.

When Harvey would run, he liked to run every morning, and my son insisted on going out with him at 5:30 in the morning to run. All of those things were basically in response to that kind of atmosphere that was being generated, and we were making every effort we could to try to keep that from being the focus of the campaign. But we were certainly aware every day of that campaign of what we perceived as a physical risk, based on calls that we were [920] getting.

I think the Helms campaign went out of its way to try to capitalize on the dichotomy of races in the campaign.

They did one commercial that focused on me as the campaign manager and distorted my appearance and distorted my voice and implicitly was saying to the public that this was a black operation; the campaign manager was black, the candidate was black and everybody else in the campaign was black, so to speak.

And then, of course, there was the what we called the white hands ad near the end of the campaign, which connected economic and job insecurity of white people to this racial distortion and a distortion of Harvey's record on quotas.

And I believe the Helms campaign also distorted Harvey's voice and appearance on occasion in its commercials, so there were a number of incidents during that campaign that were race related.

* * * *

[922] Q. Now, in 1990, do you recall any other incidents that occurred during the campaign that affected black voters?

A. Yes. The Republican party engaged in what was called the postcard campaign, which was a mailing directed to black voters suggesting that if they had moved

their residence from the residence that was listed at the boards of election, that they would be criminally prosecuted if they tried to vote. That postcard campaign was massive and diverted a lot of the campaign's time and attention.

I ended up having to assign somebody almost full time to respond to people who were calling to express concern about whether they could vote or not to vote and to deal with how you transferred your registration. And I believe it had a substantial impact on black voter turn-out in the final analysis.

Q. Now, did you actually see any of those postcards?

A. Yes, I did.

Ms. Hodgkiss: May I approach, your honor.

Judge Phillips: Yes.

Q. I'm going to show you what's marked for identification as Exhibit 523 ask you if you can tell us what that is.

A. Yes, this is one of the postcards that was mailed out by the Republican party and it says at the bottom, paid for by the North Carolina Republican Party, and I believe [923] subsequently they entered into a consent order in some legal context, agreeing not to engage in that kind of conduct anymore. But, of course, that was after the fact and after the campaign was over, and after it had the impact of diverting of resources and reduction in voter turn-out.

* * * *

[928] Q. And you mentioned earlier that you had pushed the boards of elections to get you lists of voters in the district; were they able to do that?

A. Yes, they were able, I guess, before the primary. Well before the end of the primary, the boards of [929]

elections were able to provide print-outs and mailing labels from most counties of every registered voter in the 12th congressional district. They could give it to us by race, they could give it to us by age, by sex or gender. And so we took that information and tried to figure out what made sense in terms of a direct mail campaign.

We started using the personal contacts that we had made to tie ourselves to the community leadership throughout the congressional district. And, in a lot of cases, we got them to write letters of endorsement that were localized and directed to constituents that they historically dealt with and basically did what we had done in every political campaign that I had managed or been a part of, and that was look at what made common sense in terms of how you run a political campaign.

By that time I was aware — every campaign that gets conducted is a different animal, so to speak, and you have to look at what the challenges are, what the demographics are, and what makes sense for conducting a campaign every time you start to conduct one.

Q. So how did the shape of District 12 affect your campaign?

A. I don't think it really had any impact on my ability to campaign. The access to the district was extremely good. If anything, it helped me because I was as young [930] and energetic as any of the other candidates and we set up an aggressive schedule of personal appearances. On some days we could hit five or six parts of the district in the same day, and when I announced my candidacy — in fact, I started in Durham. I had a press conference in Alamance County, in Burlington; I had a press conference in Greensboro; I had a press conference in Davidson County; and then I had a press conference in Salisbury and Rowan County; and I had a press conference in Charlotte in Mecklenburg County. And then the next day we had press conferences in

Gastonia, Davidson County and Iredell County. So I covered, just in the announcement process, the entire district.

It's just something that we had to do if we were going to conduct a campaign, and it's really no different than if I had been conducting a much more localized campaign. You would try to make stops in every part of your city council district, every part of Charlotte if you were running for mayor. You've got to make the effort to connect with voters wherever they are, and that's just characteristic of running campaigns.

* * * *

[932] Q. Can you tell us more specifically what types of issues that urban Piedmont is concerned about?

A. Well, I deal a lot with jobs and economic issues, credit access issues, housing issues, ownership and low income issues, transportation and infrastructure issues, banking issues.

In fact, there are more banking interests in my congressional district than any other congressional district in the United States, except the congressional district represented by Carolyn Maloney; she represents the Wall Street area of New York.

So, there are a lot of common issues that I have to deal with, and being able to focus my energy and efforts [933] on those common issues, I think, is a benefit to urban areas.

Q. In addition to banking institutions, are there any other institutions that are concentrated in the 12th?

A. Yes, I have six of North Carolina's 11 historically black colleges and universities. Johnson C. Smith, Livingstone, Winston-Salem State, A&T and Bennett and in Greensboro and North Carolina Central in Durham; all six of those are in my congressional district.

The bulk of the rest of them are in Eva Clayton's district. As a result of that, we had a big grants workshop where we were able to get representatives from most of the federal agencies to come to Durham for a combined grants workshop where those colleges and universities could address those issues that they have in common in one forum, rather than being split out all over the place.

I have a number of other wonderful educational institutions located in my congressional district; community colleges that I have spent a lot of time cultivating and helping with their resources.

Most of the housing authorities for these cities are located in my congressional district. We've done a lot of work with them in helping them process and package grant applications. Mecklenburg County Housing Authority got [934] the biggest grant for rehabilitation of low income housing community that has been received in North Carolina during my tenure. I mean, I guess I could go on and on, but I want to stop.

Q. Let me ask you, then, what committee assignments do you have in congress?

A. I serve on the Banking, Finance, and Urban Affairs Committee. I made the commitment to do that, or to seek that committee assignment during the course of my campaign, because it deals with urban issues, has oversight over the Department of Housing and Urban Development, and it also deals with banking issues, both interest that the banks have primary focused interest in and issues that the community has a lot of interest in, such as Community Reinvestment Act and community development banking and enterprise zone legislation. So, I serve on that committee.

I also serve on the Judiciary Committee, which is the committee which deals with all of the crime legislation, which is an area that my congressional district has a lot of interest in. As you might imagine, it's — the highest

crime impact areas of North Carolina are in my congressional district. It also — that committee also deals with bankruptcy jurisdiction, the federal courts, which I'm able to use my legal background with, and it [935] also has dealt with the telecommunications issue, the question of access of long distance and the Baby Bells and Mama Bells and issues of that kind.

And finally, I serve on the Postal and Civil Service Committee as a temporary assignment. And that committee deals with federal employee issues and postal employee issues. Next to David Price's district, I have more federal employees and postal employees than any other congressional district in North Carolina.

Q. Are there any issues in congress that you have taken a special interest in that relate to the nature of the 12th district?

A. Yes. I have been very active in housing issues, in particular with the Department of Housing and Urban Development. I serve on the housing subcommittee of the Banking, Finance and Urban Affairs Committee. I have been active in consumer issues. I serve on the consumer subcommittee of Banking Finance and Urban Affairs. I have been very active in CRA issues, Community Reinvestment Act issues, because what we're trying to do is draw a proper balance between the banks and the community, and the banks' responsiveness to the community.

So I'm constantly walking that line between communicating the banks' interest to the community and communicating the communities' interest to the banks. I [936] have been very active in community development banking issues.

We've passed a community development financial institution legislation and I sent out copies of the legislation and summaries of the legislation to a lot of banks

and community groups asking to get their comments bank so I could be an effective advocate in that area.

I have been extremely active in enterprise zone, empowerment zone and enterprise community legislation; that's what it's called now. I have sent out information that enables all of the cities throughout my congressional district to get in the forefront of applying for enterprise community status, which would allow them to cut through some of the bureaucratic red tape at the federal level, and also access additional impact funds that would be more beneficial to urban areas.

I've also been a very active player in the crime bill in the Judiciary Committee in helping to shape that crime bill in a way that I hope will be responsive to the need to reduce crime. And I have been very active in telecommunications issues as a result of my service on the Judiciary Committee.

Q. I want to turn now to ask you how you communicate with your constituents. How do you reach the voters in the 12th district?

[937] A. Well, first of all we sat down with — we tried to get a staff together that is reflective of both the racial make-up and gender make-up of the congressional district. I have a very diverse staff. I have staffed local offices with people who are residents of the areas that they work in throughout the district.

In Durham, I have a person who — I have a fixed office in Durham and I have a person from Durham who is the constituents services person there. I have a fixed office in Greensboro, and I have two people who are residents of that area who do constituent services there. I have a fixed office in Charlotte and I have people there who were originally residents of Charlotte. I also have a mobile person who, on a regular basis, on a regular fixed schedule, goes to hold office hours in municipal buildings in Gastonia, in Mooresville and Statesville in Iredell

County, in Salisbury and Spencer in Rowan County, in Lexington and Thomasville in Davidson County, in High Point in Guilford County, in Haw River and Burlington in Alamance County. And that person's job is to service those communities where we could not afford to put fixed offices. And then we service Forsyth County, the Winston-Salem part of the district out of the Greensboro office, and also out of a fixed office which the city of Winston-Salem has provided to us in the community in [938] Winston-Salem.

One of the people from the Greensboro office goes over there two days per week. So that's the way we try to make service conveniently available.

I have a policy in my office which I continued from my law practice where if somebody calls in, they don't even get asked who's calling, as most folks do. If they call for me and I'm in the office and not on another call or in conference with someone else, the call is put directly through without them even asking who's calling. So I spend a lot of time talking to surprised constituents on the phone who never thought they would get to talk directly with me. My staff follows the same policy and that's worked out very well in terms of providing access. I do a — I have an advisory committee.

Q. Would you turn to Exhibit 517?

A. Yes.

Q. And would you identify for the record what that exhibit is?

A. Exhibit 517 is a county-by-county breakdown of the advisory committee members and the population percentage of each of those counties in the congressional district and the population percentages of the membership on the advisory committee in each of those counties.

I think we have 496 members of our advisory [939] committees. They are scattered basically geographically throughout the congressional district. I think about racially it's about 55 percent black or 53 percent black, 44 percent white and the rest is other ethnic groups.

Q. What is the function of the advisory committee?

A. The advisory committee's function is to receive information from us. We send a monthly newsletter that basically talks about the legislative issues that have taken place during the preceding month, grant possibilities that may be coming up or various federal programs, new programs that the community residents may want to be aware of. So we disperse that or disperse that information through the advisory committees.

Most of the members of the advisory committees represent organizations, and we have received commitments from them that they would take that advisory letter and copy it themselves or use whatever mechanism they can to disperse that information throughout their organization or their community or their church, if that's the case. And then we use them as a feedback mechanism.

We have actively encouraged them to solicit opinions of people in their respective communities or outside their respective communities, for that matter, and to give my staff and me feedback on what they're hearing about things to the people that people are concerned about, positions [940] on issues.

Q. Would you turn to Exhibit 516?

A. Yes.

Q. Can you identify that exhibit?

A. This is what we call a guide to constituent services. After I had been in office for almost a year and felt like

I had my staff and office locations in place and in a position to really be responsive to constituents in a way that I thought was effective, we did one mailing to every resident in the 12th congressional district, and that mailing is exhibit 516.

And basically what it does is tell constituents what kinds of things a congressional office can do. It talks about help with agencies, it tells them how to how best to bring a legislative issue to our attention, be specific, share your experience, include your name, address, phone number, so we can get back to you. It talks about visits to the nation's capital, what we can do to be helpful in getting White House passes and setting up tours and meeting with school students. It talks about accessing government documents. It talks about helping with passports, getting U.S. flags.

We had a blurb in here about the earned income tax credit, which we have done an extensive amount of education of our constituents about. My constituents are [941] the second lowest income constituents in North Carolina of the congressional districts. We found that a lot of citizens who were eligible for the earned income tax credit had just not filed the tax forms. So we've done an extensive education campaign about the earned income tax credit and how you — what forms you need to fill out, who can be helpful to you, because we thought that was something that residents in a basically a lower income congressional district would want to know about.

This newsletter talks about how you get presidential greetings on special occasions and what help we can be with that. Talks about summer interns, service academy nominations, has a list of information hot lines that people can call and then it has a listing of our fixed offices and our satellite office schedules that I've just testified about.

My thinking, basically, was that this is a congressional district of people who really have not felt like they had access to their government, and so we have tried to go the extra mile to let people know that our offices are their offices, and that they should try to use our offices as a resource to cut through federal red tape and deal with their government.

Q. Would you turn to Exhibit 520?

A. Yes.

[942] Q. Can you just briefly describe for the record what that exhibit is; what the information is?

A. This is a mail report that our computer — the computers in our office generated which basically tells the kind of letters that we have written by county and by subject matter.

The first page is a summary page that indicated that, as of the date that this was done, which was about two or three weeks ago, I guess, we had generated a total of 5,630 letters out of my congressional office to constituents in the 12th congressional district. We had generated additional correspondence inside North Carolina and outside North Carolina. So the first page just gives a compilation of that. And then the subsequent pages gives a county-by-county breakdown of the number of letters that I have written and the subject matters that those letters have covered, based on the information generated from my office word processing computer.

Q. And would you turn to Exhibit 521?

A. Yes.

Q. Just briefly, tell us what that exhibit is.

A. This is a county-by-county breakout of the constituent services cases that we have processed through our office. The ones that have been opened and closed, as well as the ones that are still active, and the

subject [943] matters those constituent services have covered from, based on categories that we maintained in our office.

Q. And do you have any way of determining the racial breakdown of the constituents that you provide these services for?

A. Nothing other than visual observation. We don't keep a written record of constituent services by race. But based on my own visual observation and my staff's visual observation, we believe that it is the race of the people that we serve for constituent services essentially consistent with the racial composition of the congressional district. And, if anything, that we do probably slightly higher percentage of white constituent service work than we do for the black residents. But that's based on who comes in and asks us to do something.

* * * *

[948] Q. Now, finally, I want to ask you how accessible District 12 is; how easy is it for you to get around?

A. I'm the envy of other members of congress. I mean, I don't know of any other member of congress who can fly into the northern end of his congressional district and land into Raleigh-Durham or fly into the middle of the district and land in Greensboro or fly into the southern end of the district and land in Charlotte.

[949] When I come home to Charlotte every time, almost every time I get off the plane, there's some other congressperson going to Tennessee or Alabama or South Carolina, and I'm at home before they even get their next flight because Charlotte obviously is the U.S. Air hub. Raleigh-Durham is the American hub, so a lot of folks fly through that airport. And then Greensboro is kind of the Continental low fare center out of Baltimore, if you want to fly in there, and I have regularly been able to fly into various parts of the district.

In terms of road access, I can get anywhere in my congressional district within three hours, even staying within the speed limit. So I really think it's one of the more accessible congressional districts in terms of being able to get to constituencies of any that I'm aware of.

Q. And do you know how voters in your district learn that they are in the 12th district?

A. Well, the boards of election in each of the counties, with the exception of Rowan and Iredell, have sent out cards to everybody telling them what congressional district they vote in. And some of them did that — I know Mecklenburg and Guilford and Durham did it before the first election; some of them have done it subsequent to the first election. But I think everybody knows now what congressional district they are in. Every one of my [950] constituents has now received a copy of the constituent services guide, which has been introduced as an exhibit. And I certainly get regular telephone calls and correspondence from them.

* * * *

[967] Q. Yes. Mr. Watt, did you become aware of the fact that, according to this poll taken in October, November 1993, only 6 percent of the respondents knew that you were their congressman?

A. Yes. I had been told that that's what the poll reflected. I didn't have any knowledge of it other than being told by legal counsel in this case.

* * * *

[985] Q. Has it been your impression that where a black candidate, at least a black Democratic candidate, is involved, the vote by African-Americans has been very cohesive in favor of that candidate?

A. Yes, although I would hasten to say that, at least in Gantt's first mayoral race, given the very narrow mar-

gin, there was at least some possibility that the black vote was decisive, but not being completely cohesive.

Q. In his later campaigns, was a black vote cohesive for Mr. Gantt?

A. Yes.

Q. And in the senatorial race, was it cohesive in Mecklenburg and everywhere else, that you are aware of?

A. Certainly substantially cohesive, yes. I couldn't say, for example, that every black person who voted, voted for Gantt, but I think there was a substantial amount of cohesiveness, yes.

Q. Would 95 percent be a reasonable estimate at least?

A. Yes, probably.

* * * *

[995] Q. Now just a few final questions, Congressman Watt. Do you remember being interviewed on the McNeill-Lehrer program on television for a interview by Kwame Holman?

A. Yes.

Q. Did you see the program on Tuesday, March 29, 1994, when it aired or videotape thereof?

A. No, I didn't.

Q. Let me ask you this. If is this a correct summary of remarks you made to Mr. Holman. Obviously I don't want to call justice of the Supreme Court racist, but the logical extension of what she was saying is that a 55 black district which happens to be 45 percent white is racial gerrymandering is racial apartheid, yet a 90 percent white district which is 10 percent black is somehow integrated, it didn't make sense what she was saying except in some historical — and I would characterize that as racist; is that a correct rendition of the comments you made to Mr. Holman?

A. Essentially, yes. I have said and believe that some of the assumptions on which the Supreme Court's opinion in *Shaw v. Reno* is based are racist assumptions, and I have [1996] said that, and still believe it.

I have also gone out of my way on each occasion that I have said that to say that I am not calling a member of the court racist. I really have more respect for the court than that, and I think you will find if you go back and look at my public statements, that I am probably the last person in the world that would call somebody a racist.

I believe there are racist opinions which are based on a lack of information, and racist assumptions that people make that are based on a lack of information. And when you inform those people with the facts, they revise themselves and they revise their opinions.

And I expect if you followed that interview all the way through, I expressed confidence at the end of the interview that if they played it all, that I thought the same would occur with the justices on the Supreme Court.

I think that's what this trial is about at one level, to attack those assumptions, so that when the case does go back to the Supreme Court, the court can make their judgments with information. And I was delighted to hear one of the witnesses say that, in fact, the 12th congressional district is the most integrated congressional district in the country, and I think that is directly counter to the Supreme Court's assumption, which [1997] suggests that an 80 or 90 percent white district can somehow be integrated yet a 55, 45 percent black district is racial apartheid.

Q. Let me ask you this. Is it your belief that it's entirely appropriate to draw lines for congressional districts with a specific purpose to assure that African-Americans have a majority registered voters, regardless of whether they are geographically compact?

A. Against a more than 90-year history of racially polarized voting that makes it impossible for a black candidate to be elected, I think as a temporary measure, this is something that is both desirable and legally required and constitutional.

Q. By temporary you mean something that would last into the next century; is that correct?

A. Well, every recount, every census lasts ten years. I think ten years from now or ten years from 1990 the legislature — it would be incumbent on the legislature to look at it and make a determination of whether it was still necessary, given where we are in history, to continue to draw districts this way.

But right now, I can tell you that my experience is that in the absence of majority black districts, no black person is going to be elected to congress from North Carolina. And I think that would be unacceptable if South [998] Africa, for example, came forward with a plan that excluded or made it impossible for whites to be represented in their democratic process, and I think it should be unacceptable in this country.

Q. So it's your testimony the only way that you view it to assure the election of the African-American, one or more African-Americans to the congress, is to create majority black districts?

A. At this juncture in history, yes.

Q. In that connection, would it also be true then, it's your view that traditional redistricting principles such as contiguousness, geographical compactness, political subdivision, should be discarded, if necessary, in order to create majority black districts?

A. Well, my tradition, Mr. Everett, that I value more than anything else, is the tradition of democratic representation, and I value that over the traditional principles that you have articulated. And I think our

democratic society should value that, and does value it, and that's what the Voting Rights Act is about, and to some extent, that's what the constitution, hopefully, is about.

Q. Now, in that same vein, have you stated at panel, which was videotaped, that I'm not sure that a black person representing a majority white district would have [1999] had the freedom of voting against NAFTA?

A. Yes, I've said that.

Q. Is that still your opinion?

A. Yes. I mean, it's basically consistent with what I was saying before. If you represent inconsistent constituencies, it is more difficult to represent those inconsistent communities of interest.

And I expect, had I been representing more of the corporate interests, which is what you would have gotten in historical pattern of the way congressional districts are drawn, I would have either had to change my view on that or I would have been out of step with the majority of my constituents on that issue and that's the context in which I made that statement.

Q. Did you, in the same context, say that it adds to the debate to be able to bring up a perspective without catering or having to cater to the business or white community?

A. Yes, sir, I made that statement. I can give you many examples of it. Most recently, this week, when I met with a banker. He pointedly asked me the question if comes down to voting my interests as a banker or voting what you perceive to be the communities of interest in your district and those two things are at odds with each other, I want you to tell me you are going to vote with me.

[1000] I looked at him and said, sir, I can't tell you that. I will tell you that I will consider your opinion, I will listen to you, I will allow you to persuade me, and if I believe that you are right, I will vote with you, with your interests.

But my interest, representing the constituency that I represent, and I would tell you, Mr. Everett, I would never have been able to make that statement in the context of the old 9th congressional district. And so again, that's an example of the difficulty.

Now, I want to hasten to tell you that that doesn't mean that I don't have to compromise. I probably end up compromising and walking the line between the business community and the community a lot more than most people do, and I try to do it with integrity, and I try to do it as I believe I should do it.

But I would be in a completely different situation, in my opinion, if I represented a district like the old 9th and that's really what I was saying to you or in response to the question on direct, as to why I would not have run.

I consider myself a very principled person, much less so a political person in the sense that I am always trying to figure out the way the political winds are blowing. And representing a district that you are consistent with [1001] in your philosophies, allows you to be consistent in voting your conscience without buckling under or catering, as you said my statement said, to other interests that may not predominate in my district.

Q. Basically you seek to represent a constituency that's consistent with your particular view, is that it?

A. No, sir. I hope you don't misunderstand what I'm saying. I think I tried to articulate it as best I can. It's a lot more comfortable for any politician to represent a constituency that his or her personal opinions and views are consistent with.

Q. Now, have you also stated that you feel that drawing districts the way we have discharged to draw them channels representation toward the middle?

A. I think I gave that answer in the context of some theoretical question about proportional representation which — but I don't know that. Ask me the question again.

Q. Okay. Asking this. Do you feel that districts, the way that we historically draw them, channels representation toward the middle?

A. To some extent it gives the middle all the power, so to speak, and both conservative Republican interest less ability to be heard, and more liberal interest less ability to be heard, and all of that, I think, is [1002] important in the context of a democratic society. I mean, I think we need to hear all the views. That's what democracy is all about.

Q. In that context, did you say this is a consensus and coalition kind of things, and to do that you systematically exclude the extremes, both the conservative and liberal extreme.

A. I believe the context I said that had to do with a condition of proportional adaptation.

Q. Do you feel special duty or responsibility concerning African-American citizens in a district other than the 12th district?

A. In the same sense that I feel a responsibility to white citizens who are not in the 12th district. My responsibility is to consider all of the input that I get on a particular issue and to act with integrity and make a judgment based on all the facts.

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TESTIMONY OF ARTHUR POPE

April 4, 1994

* * * *

[1025] Q. Mr. Pope, could you please explain to the court the extent to which you participated in the redistricting process in North Carolina during the 1991/92 redistricting cycle?

A. My participation actually began 1990, when I was a member of the North Carolina House of Representatives and the North Carolina General Assembly first started distributing information —

Judge Phillips:: Speak up a little bit.

The Witness: My participation actually began during 1990, I was a member of the state House of Representatives 1989-90 session, it was in 1990 that the [1026] General Assembly first began distributing information on the redistricting process and holding meetings and briefings on that. I attended the meetings whenever I could, and started keeping a file on redistricting materials.

During '91, I asked for an appointment from Speaker Dan Blue to be a member of either the Congressional Redistricting or Legislative Redistricting Committee, and was recommended by Representative Jonathan Ryan, the house minority leader, to be appointed to those committees.

I didn't receive that appointment to either of those committees, however I continued to attend as many of the public hearings and committee meetings on redistricting, both legislative and congressional, that I could.

I sought training on the redistricting computer, initially under the rules laid down by the president pro tem and speaker, I was not entitled to training on the redistricting computer but they later changed those

rules, and I was able to take that training and received it.

I drew numerous plans doing legislative redistricting, primarily in the state house, and state senate districts, and directly assisted representative David Balmer in the preparing of plan that ultimately became Balmer 6.2, at the time he was not trained to the computer.

[1027] I continued to collect files and information from committee handouts on the legislative sessions, regular session, and special session during 1991-92.

Q. Mr. Pope, I'm holding in my hand Exhibit 200, which the parties stipulated as the legislative history related to both Chapter 601 and Chapter 7.

Have you ever reviewed the legislative history for either of those two acts?

A. Yes, I have. I was present during the creation of much of that history during the committee testimony, public hearings, during handing out of the bills, also reviewed the General Assembly submission to the Justice Department when that information became available at the General Assembly.

And I have, from time to time, reviewed it since then, in preparation and looking in the progress of this litigation.

Q. Mr. Pope, you have been in attendance in the courtroom during the course of this trial?

A. Yes.

Q. Were you here in the courtroom on Friday when Dr. Lichtman testified?

A. Yes, I was.

Q. With respect to the socioeconomic and demographic indicators about which Dr. Lichtman testified, do you [1028] recall any reference by any legislator to any of

those indicators during the discussions relating to redistricting?

A. I don't recall any reference to those indicators or factors, other than for the first time in January 1992, the house Redistricting Committee, the first mention of their meeting, the urban district being a factor, and that later being raised by Representative Fitch during the House floor debate on the enacted plan.

Q. Do you recall any reference during any discussions on redistricting as to whether districts were homogeneous or to the concept of homogeneity?

A. I never heard those terms used at all during either regular or special session of General Assembly, nor did I ever hear it with regard to any districts.

Q. Are you aware of any official policy on the part of the General Assembly or any of the redistricting committees to advance any of the following interests? The first one I'll ask you about communities of interest?

A. No. Communities of interest were discussed, I'm not aware of that ever being adopted or advanced policy as a policy the state should pursue. In fact, I was an advocate of having communities of interest included as a criteria for redistricting.

Unfortunately, the House hearing, House committee [1029] meeting on adopting criteria from the congressional committee was called on fairly short notice, and I was not able to draft anything to give to a member of that committee to propose. I did subsequently for the legislative criteria have time to give a community of interest criteria.

Ms. Smiley: Objection. I'm not sure what the legislative redistricting criteria has to do with this trial. He just indicated he didn't present anything on congressional criteria.

Mr. Farr: Your honor, he just explained his conduct that he attempted to get communities of interest added as criteria to the state house redistricting committee.

Judge Phillips: Is the objection not well founded, though, that the only testimony from Representative Fitch had to do with the criteria for congressional redistricting?

Mr. Farr: Your honor, we would suggest this goes to the argument that the General Assembly didn't consider communities of interest in context of any redistricting, was not interested in considering such a factor.

Ms. Smiley: Your honor, there was no testimony about the criteria that were adopted in the local and [1030] legislative redistricting by the Senate or House. And in fact, those are different criteria and we could look to submissions by the Senate and House for those.

I don't believe this is the subject of direct examination since we did not explore the differences between the criteria between the various redistricting plans.

Judge Phillips: Is there any testimony in the record to this point in any form about criteria respecting House and Senate legislative redistricting?

Mr. Farr: No, your honor, not that I'm aware of. And we're not purporting to go into that, your honor, we're attempting to make the point that the State, we believe, has come up with an after-the-fact justification for Chapter 7 relating to alleged communities of interest, and former Representative Pope's testimony, we believe, will go to show that a majority in the General Assembly had no such interest in pursuing such criteria within any context.

The Court: We'll receive the evidence subject to objection.

Mr. Farr: Please continue.

The Witness: I did have opportunity in regard to legislative redistricting to draft a community of interest criteria which was offered in that committee and [1031] voted down.

By Mr. Farr:

Q. Were you aware of the policy or criteria related to a plan to enact an urban versus rural majority black district?

A. I never heard any discussion —

Judge Phillips: Is this congressional district?

Mr. Farr: Yes, your honor, thank you.

A. I never heard or knew of any proposal, policy or interest in creating urban black districts, or any urban congressional district until, for the first time, of the January, I think January 9th committee meeting of the House Redistricting Committee, was mentioned in passing or mentioned for the first time, I believe, by Representative Fitch. I believe Representative Fitch mentioned it on the House floor.

* * * *

[1041] Q. Mr. Pope, during the course of redistricting or related to Chapter 7, do you recall any discussion by Mr. Cohen, any General Assembly staff, or any legislator, concerning the idea that the congressional district should be created in some fashion to follow the North Carolina Railroad?

A. I never heard any such reference in North Carolina Railroad by Gerry Cohen or any other staff members in the course of redistricting.

Q. Mr. Pope, as someone who participated in the redistricting process, as a member of the General Assembly do you have an opinion as to what the purpose was of Chapter 7?

A. I think the primary purpose was to draw two black majority districts, congressional districts, where black were a majority of the population.

Q. Mr. Pope, in 1992, did you run for public office?

[1042] A. Yes, I ran for lieutenant governor of North Carolina.

Q. And in the course of that campaign did you travel the state of North Carolina?

A. Yes, I traveled about 50,000 miles in a 10-month period, visited just about every county in the state.

Q. Did you become aware of any confusion on the part of voters on about the congressional district they may have been located in under Chapter 7?

A. Yes. At campaign events, public events, general meetings, one of the most often asked questions I had about was about the congressional redistricting, both the original redistricting during the fall of '91, but primarily during '92, where people didn't understand the congressional districts, didn't know where they lived, didn't know which congressional district they were in.

* * * *

[1046] Q. One question, perhaps two.

Was your testimony that there was overriding purpose of the legislature in creating — enacting Chapter 7 to create two majority black districts?

A. Yes.

Ms. Smiley: Object to the form of the question, move to strike.

Judge Phillips: It's duplicative.

[1047] Mr. Farr: It's predicate to the next question, your honor.

Q. Could you state whether or not it was also a purpose to assure the election of two African-Americans to the United States Congress?

Ms. Smiley: Objection.

Judge Phillips: Overruled.

A. The purpose was to assign voters, by race, to two black majority districts in order to have the consequences of electing black African-Americans to congress.

* * * *

Q. And during the 1991 session, were you the head [1048] Republican joint caucus?

A. Yes, I was.

Q. What's the Republican joint caucus?

A. The Republican joint caucus consists of the house Republicans and Senate Republicans when we meet jointly.

Q. You were also a member of the North Carolina Republican party executive committee?

A. Yes, I was.

Q. And you were also a member of North Carolina Republican party central committee?

A. Yes, as the Republican joint caucus leader, an ex officio member of the central committee.

Q. Didn't you, the Republican joint caucus, and North Carolina Republican party hire an attorney to advise you about preclearance of the first enacted plan, Chapter 601?

A. Yes. The Republican National Committee had on retainer the services of Bob Hunter, attorney. And the North Carolina Republican party, as part of the Republican party, hired Mr. Hunter to advise us.

Q. Isn't it true that you and the Republican joint caucus and the North Carolina Republican party and national Republican committee made a concerted effort to convince the United States Department of Justice to object to Chapter 601? A concerted effort?

A. I don't know that a "concerted effort" is the [1049] terminology I would use. David Balmer prepared an objection, I understand Bob Hunter prepared objection, and we encouraged people who might have cause to object to please do so. So I guess coordinated, or, I guess, concerted.

Q. So you hired an attorney or used an attorney paid for by the national Republican committee, who advised you in objecting to Chapter 601?

A. He was on retainer in advising us before we got to the stage of the enacted legislation of 601; he also advised us on the objection process.

Q. And isn't it true that you and the joint Republican caucus and the North Carolina Republican party encouraged people to write letters to the Department of Justice objecting to Chapter 601?

A. There was one specific occasion when we had a Republican joint caucus meeting when I informed the Republicans, or caucus members, saying this was an opportunity to file objection letters and if you know of anybody who's upset with the redistricting plan, the community leaders or whatever, encourage them to write objections.

Q. And didn't you have Mr. Robert Hunter arrange to meeting in Washington, D.C. with Department of Justice staff and attorneys?

[1050] A. I'm not sure we made actual arrangements, may have been Bob Hunter, but he was involved with us when we went up in October, I'm not sure, I can't recall

the exact date right now, to the Justice Department to object, in my case, about the North Carolina House redistricting plan. And in David Balmer's case, the congressional redistricting plan.

Q. Isn't it true that Representative Balmer sent lawyers to the Department of Justice objecting to Chapter 601?

A. That's my understanding, yes.

Q. And isn't it true you sent an objection letter to the Department of Justice about the State House plan?

A. Yes, it is.

Q. And isn't it true that you, and Representative Balmer, Senator Leo Daughtry, Senator Bob Shaw, flew to D.C. in a private plane to personally present objections about North Carolina's redistricting plans?

A. Yes.

Q. House, senate and congressional?

A. Yes.

Q. Okay. And wasn't the basis of your objection that the State had only drawn one minority district in the congressional redistricting plan?

A. The basis of my objections to the Chapter 601, when I drew it, is that it was a badly gerrymandered district. [1051] The districts were odd shaped, that the State stated an argument that we ought to draw black majority minority districts in order to comply with the Voting Rights Act; yet, in fact, when they drew those districts, whether it was legislative redistricting or congressional redistricting, they only did so in a manner which would protect the white incumbent Democrats.

If a black majority district endangered a white incumbent Democrat, they would not draw them. And also, the one they did draw in the northeast was far more

bizarre shaped, long, totally lacking compactness, than the alternatives available that Representative David Balmer, in the Balmer 6.2, had drawn a far more compact northeastern black majority district than in the enacted state legislation.

So my objection, my opposition to Chapter 601 was while we were under the guise of the Voting Rights Act, it could have been done, it could have still created just one or two black majority districts for more compact, with far more respect for governmental subdivision, such as counties and cities, and the surrounding districts could have been far more compact, more respectful of governmental subdivisions like counties and towns.

Q. So, isn't it true that you objected to Chapter 601 and to the state House plan and the Senate plans because [1052] you, the Republicans, felt that North Carolina should have drawn more minority districts in the house plan, and the Senate plan, and in the congressional plan?

A. The Republican party, this time you asked about the Republican party. The Republican party, there was never any vote. You asked me this during the deposition, there was no vote by the Republican caucus, joint caucus or house caucus, Republican executive committee, Republican central committee, on a strategy or plan takes to how the district should be drawn or objected to.

And again, what I discussed with my colleagues, discussed with Democrat House members, were if the ground rules being laid out on the advice of the General Assembly staff, including Gerry Cohen, Leslie Winner, not to quote them indirectly, but the committee chairmen, that we should draw majority minority districts where possible, that should be done on consistent basis.

It was my opinion and belief, then and now, especially in the state House redistricting, which I worked on, as well as congressional redistricting, they only drew the

black majority districts when it did not endanger a white, incumbent Democrat. And that was not a proper consideration.

And what Representative Balmer tried to do in the congressional, and what I tried to do in the House, was [1053] show there were other areas in the state where you could draw majority minority districts, or black majority districts, which were as compact, if not more compact, than the districts that the leadership drew and ratified in the House and congressional redistricting but refused to do so because to do so would have risked or endangered the white incumbent Democrat or increased opportunities for Republicans in the adjoining districts.

My position, which I stated in committee, during General Assembly session, as regard to the consequences, if you are going to go by the rule, draw a black majority district regardless of the consequence of creating a Republican joining district, or endangering a white Democratic incumbent because he would be in the black majority district or his old joined district and there will be more Republican leaning.

Those were not legitimate concerns. You should not draw the district that way. And that's what I talked to the Justice Department about regarding redistricting. I didn't sit in on Representative Balmer's meeting but I understood that was the gist, from our conversation, what his objection was. And, indeed, we partly cited by the Justice Department in their letter objecting to North Carolina first congressional plan in their first House redistricting plan.

[1054] Q. So isn't it true that you, Representative Balmer, Senator Leo Daughtry Senator Robert Shaw, all Republicans, went to D. C. and objected to the state House Senate and congressional plans because you said the State did not draw enough minority districts?

A. I think I said that, yes. We objected for many reasons, part which had to do with even the ones they did draw on the peculiar shapes, far more completely, not always, but lacking compactness, when they could have been drawn more compactly in other black majority districts.

If that's what you believe the criteria were, could have been drawn as well. There was debate among Republicans, among ourselves, to what extent the Voting Rights Act, the Gingles case required the creation of black majority district, as a matter of precedent, but given the ground rules, as I understood them at the General Assembly, you should draw them where you could but that rule was not consistently followed. It was only followed when not endangering a white incumbent Democrat.

But again, in drawing black majority districts, draw them according to race, but that was not done consistently. It was done haphazardly or in context of not endangering white incumbent Democrats.

* * * *

[1056] at that public hearing that Representative Balance, appeared and spoke on behalf of the other Republican congressmen from the state of North Carolina?

A. Sitting here right now today, I don't have specific recollection of his comments.

Q. Do you recall hearing those comments from your Republic congressman on another occasion or in the press?

A. Again, I don't have a specific recollection. I'm not saying they didn't say that; I don't have a specific recollection of it.

Q. Did you file a lawsuit, *Pope v. Blue*, alleging Chapter 7 as partisan political gerrymandering?

A. In shorthand terminology, yes.

Q. And in that lawsuit, did you not file an affidavit that was attached to the complaint?

A. Yes, I did. Wait a minute, I don't know it was attached to the complaint. I think it was filed subsequently but I'm not sure.

Q. But you do recall signing an affidavit in that lawsuit?

A. Are you are talking about verification to the complaint or affidavit?

Q. I'm talking about an affidavit?

A. Yes, I did file an affidavit subsequent to, during the course of litigation or —

[1057] Q. And in that affidavit, did you indicate that you believed that the changes made after '92 Congress I by the Democratic leadership and ratified by the General Assembly, Democratic majority in 1992 Congress based number ten, were not necessary to comply with the Voting Rights Act; in fact, were made with the intent and had the results of protecting the Democratic incumbent congressman?

A. I believe that many of the changes and did, in fact, have to do with protecting the Democratic incumbent. In fact, some of Gerry Cohen's testimony I heard during this trial confirmed that, especially, as I said earlier, taking the Democratic precincts, putting them in the 5th district. Taking the Republican districts outside of the 5th, putting them in the 10th. So while the first and 12th district concerned racial gerrymandering, a lot of the other odd shapes and where the first and 12th were located, how they were drawn, considered parts of gerrymandering.

* * * *

[1058] Q. I believe you indicated that it was not necessary — that the changes made by the General Assembly were not necessary to comply with the Voting Rights Act. In fact, were made with the intent and had the result to protecting the Democratic incumbent congressman. Is that what you had sworn to?

A. I said on information and belief, including to but not limited to the summaries of the Supreme Court, attached thereto as Exhibits B, C, D, I believe the changes made after the '92 Congress I by the Democratic leadership and ratified by the General Assembly Democratic majority 1992 congress base 10, were not necessary to comply with the Voting Rights Act.

[1059] The important part here, I see before me, the changes made after '92 Congress I. '92 Congress I included the two black majority districts. That was the Merritt-Peeler plan that was loaded into the computer and presented to the committee.

I believe most of the changes made between the Peeler plan's two black majority districts and enacted plan were, in part, due to political partisan gerrymandering. The Balmer 8.1, the Peeler plan both show that two black majority districts could be drawn by using race as criteria rather than using those districts and placing them where there were past allegations or proof or claims that there had been racially polarized voting or there was a large population of black populations such as for the Justice Department referred to from Charlotte to Wilmington, was put up I-85 from Charlotte to Durham.

Then, as Gerry Cohen testified, even after he got the basic I-85 district from Charlotte to Durham, they moved part of it further west out of Rowan and I believe Cabarrus County over on Iredell County in order to protect Congressman Hefner.

In turn, they included blacks in Winston-Salem out of Neal's district. They had to replace those with Democratic precincts to help Congressman Nettles, which Gerry Cohen also testified to.

[1060] So yes, after the two black majority districts were proposed in the Peeler plan, which I believe were drawn on the basis of race, most of the subsequent changes were done for partisan gerrymandering purposes, as I stated in the affidavit.

Q. Didn't you go on, in paragraph seven of the affidavit, and didn't you swear that the convoluted shapes of the congressional districts were necessary to pack Republican voters and citizens to extort the vote of Republican into the 6th, 9th and 10th congressional districts?

A. The convoluted shapes of the 6th, 9th and 10th congressional district.

Q. Middle of paragraph seven.

A. Yes. Those districts, you could have drawn a black majority district and still had more compact 6th, 9th and 10th congressional districts. Again, you couldn't draw the I-85 district either in the Peeler plan or '92 Congress I or in the enacted plan, and have a compact district.

Even after drawing an I-85 district stretching from Gastonia — first Charlotte, Durham and Gastonia, Charlotte, Winston-Salem to Durham, you could have gotten more compact districts.

Representative Balmer, in his alternative, drew [1061] fairly compact districts around the non-compact, the very long shaped black majority districts or majority minority districts. So yes, I say that and I believe it now.

Part of the reasons that those districts, the 9th and 10th districts are so odd shaped, they were packing Republicans in there, were taking out the blacks out of

the Democrat leaning districts and putting them in the black majority district.

Q. In paragraph seven, is African-American or black ever referenced?

A. This lawsuit concerned parts of gerrymandering, so I was giving this affidavit with regard to the parts of gerrymandering after, especially when you referred back to the first paragraph, after '92 Congress I, the Peeler-Merritt plan was introduced with two black majority district. This affidavit does not address that issue; that paragraph does not.

* * * *

[1062] Q. Now, in your deposition, didn't you attribute a large number of the irregular shapes to partisan gerrymandering?

A. Yes, particularly in the western part of the state.

Q. Only the western part of the state?

A. No, particularly in the western part of the state. I think large part of the explanation of why the eastern 1st district was drawn so irregularly, you had the cross-overs in the 3rd district and the way the 7th district was shaped, starts up again drawing the racial districts. The black majority 1st district, how that particular district [1063] was drawn, there was several alternatives. And how the white majority district was drawn around it was due to the partisan effect. I believe we went through that in the deposition.

Q. Didn't you testify in the deposition that, in fact, the intermingling of the 7th and 3rd was to help Congressman Rose and Lancaster, the partisans?

A. I believe that was part of the reason.

Q. You testified there were heavy concentrations in Onslow and Carteret counties that were deliberately split between the 3rd and 7th district for partisan reasons?

A. Without having the deposition in front of me, my recollection was I thought that might be the case. I don't know that was the case. I didn't have the detailed concentrations nor could I tell from the maps that we were using, which were basically eight and-a-half by 11 size, exactly where the lines were. I thought that was the case. I have not looked at it in detail since then, the blow-ups of the areas or bigger maps. So I'm not sure but I thought that was the case.

Q. Are there Republican concentrations in Carteret and Onslow county.

A. I do know, from looking at state wide vote returns and knowing there was elected in the areas large concentration of Republicans in those areas.

[1064] Q. If those concentrations in Carteret and Onslow county were split, would you consider that fracturing of Republicans?

A. Well —

Q. Fracturing Republican votes?

A. It depends on partly why they were split, I mean — felt that they were two separate counties, I think you should — you should follow county boundaries when you can. If the reason they were put in separate districts was because they were in separate counties, and they said we need one-man, one-vote without split counties, there could be reasons not to do it.

Looking at the map, you can't tell from this big map — seems like most — I can't tell from that map, sorry. You want —

Q. Why don't we move on to another district. With respect to the 4th district, haven't you previously testified that Republican concentrations in east Durham and northwest Wake County were split to fracture Republicans?

A. My house district is in northwest Wake County. It goes up to the Durham County line. And there are some similarities, I don't argue there are communities of interest between northwest Wake County and the eastern part of the Durham County. Besides the geographic [1065] overlap, it showed the Falls Lake watershed areas, showed transportation concerns, and those precincts do vote Republican

So, a natural fit to include them together, other than deliberately choosing to respect county lines. They did choose to respect county lines because at least one of the precincts just north of the new light precinct was included in the 2nd district; the remainder included in the 4th district.

Q. So your testimony now would be that east Durham and northwest Wake were not split to fracture Republicans?

A. I didn't say that. It is, again —

Q. Could you answer my question. Have you, in fact, testified previously or —

A. I stated that was my belief then; it's my belief now.

Q. Thank you. Haven't you also previously testified the 2nd district was wrapped around the 4th district to split Republicans between the 4th district and 2nd district?

A. Yes, I have.

Q. And you also testified that the 2nd district made a C around the 4th district to keep Valentine out of the 3rd and 4th district and to piece together enough voters for Valentine?

A. I believe I said inverted C, since the C goes the other way. Yes, I did.

[1066] Q. With respect to the 8th district, haven't you previously testified that Republicans in Rowan, Stanley, Concord, Kannapolis, and parts of Davidson were submerged in the 8th district?

A. Without having my deposition in front of me, I probably said that, yes.

Q. Do you now believe that?

A. I believe it, yes.

Q. Okay. Haven't you also testified previously that Moore County is almost majority Republican, and it was submerged in the 8th district?

A. Yes, I think I said I wasn't sure whether it was partly split or not. From looking at it right now, it was partly split up, I believe. Yeah, it was partly split up and part submerged under the in the 8th.

* * * *

[1067] Q. Haven't you also previously contended that Republicans were packed into the 6th district to help Congressman Neal and Congressman Hefner?

A. Again, I don't have that deposition in front of me; yes, I believe that's the case.

Q. Do you believe that — do you recall previously testifying about the self-interest of legislators that occurred in the redistricting process?

A. Yes, I do.

Q. And do you recall testifying that Senator Ballance wanted Warren and Vance counties out of the 12th district and into the 1st?

A. I recall that, yes.

Q. And you also previously testified that under the Peeler plan and Hardaway's plan, Hardaway had the 1st

to himself since Warren and Durham counties were in the 12th district?

A. That was my understanding. And that's correct, because Representative Michaux was in Durham County, which I believe at that time was — would be under the 12th district also.

Q. Didn't you previously testify about a plan you created for the house, Wake County House district, that [1068] you believe would make the Wake County House district more compact?

A. I testified it would make them both more compact and lower the total deviation about four House districts that were involved.

Q. And isn't it true that Representative Fitch refused to make that change when you refused to support the plan in return?

A. They were talking about House Redistricting Plan, yes, that's true.

Q. Okay. And Mr. Pope, in your deposition, didn't you conclude that partisan and racial gerrymandering were intricately related in drawing Chapter 7?

A. What I concluded and what I stated was, you start off with a racial gerrymandering, because the first districts were drawn in order to create racial majority.

Then, how, the exact shape and where they were located in the state, Charlotte to Wilmington versus Charlotte to Durham, and the irregular shapes of districts and surrounding districts were made worse, and interrelated to the partisan gerrymandering. You start with the racial gerrymandering, and the political gerrymandering makes it worse.

Ms. Smiley: I have no further questions for this witness, your honor.

[1069] Mr. Stein: I have a few, your honor.

CROSS EXAMINATION

By Mr. Stein:

Q. Mr. Pope, Ms. Smiley asked you about the lawsuit of Pope against Blue, and I think you acknowledged that you verified the complaint in that case; is that right?

A. That's my recollection, yes.

Q. Do you recall stating in the complaint that, since the time of reconstruction through the present, Democratic party has been successful in its effort to exclude or limit blacks and Republicans from the state legislature and congress?

* * * *

[1070] A. In response to your question, yes, I do believe the complaint stated that, as I told you when you asked me this question during the deposition, I point out the counts beforehand. There was an exception to that period from reconstruction to the present, in 1896/1898 elections, where the Republicans and Populists together formed the Fusion Party. And for a brief while, had majority in the General Assembly and also elected a Fusion Popular Republican governor and Supreme Court.

That question didn't get made, I didn't catch it when I signed the verification.

* * * *

Q. Do you recall stating in the complaint also that [1071] blacks have consistently been underrepresented in the state legislature and no black has been elected to congress in this century?

A. I believe that's correct, because the last black was also the last black Republican elected from the east until 1966, that was Congressman George White from the northeast.

Q. And do you recall stating in the complaint that the majority has repeatedly and consistently fragmented or submerged black communities in order to enhance the election opportunities for white, Democratic incumbents?

A. That was done. I do recall that being in there, without having it in front of me to verify it now.

Q. I'm sorry, do you believe that to be true?

A. I believe historically that has been true in the past.

Q. Do you recall in the complaint, stating, in order to achieve its goals, the General Assembly adopted Chapter 7 at the request of one or more incumbent Democratic congressmen, or their staff, or agent?

A. I don't have a specific recollection. If you want to hand me a copy of the complaint to look at it, I believe I said that, but I don't have it memorized.

Q. Do you believe it to be true?

A. I believe that, the history, in fact, I believe that [1072] at least, in part, confirms this testimony of this trial.

Q. Do you recall stating in the complaint the districts established under Chapter 7 contain grossly contorted shapes with no logical explanation other than incumbency protection and the enhancement of Democratic partisan interests?

A. In the context of that lawsuit, yes. But that dealt with partisan gerrymandering. In the broad sense of Democratic interest, I think one of the key turning points when was when the Democratic incumbent congressman and Mr. Merritt, in his plan, showed that you could draw two black majority districts and protect the incumbent Democrats at the same time, and that was the beginning of what the Merritt-Peeler plan, was changes discussed in this trial became the enacted plan.

Q. Do you recall stating in your complaint, this denial and abridgement of plaintiff's constitutional rights has occurred because Chapter 7 serves primarily to further the interest of white incumbent Democratic congressmen and avoiding competitive elections, at the expense of the rights of those citizens living in the disfavored locations?

A. I think one of the key turning points was when they could protect themselves, their seat, including Walter Jones, Sr., and at the same time, added two black [1073] incumbent Democrats — and two black congressmen from the black majority districts.

* * * *

[1076] Q. And that, to your knowledge, was it not, the first plan that was developed and put out that created a majority black district that went from Charlotte, to the east, or Durham, to the west?

A. Yes, it is, to my knowledge.

Q. And of course, Mr. Balmer was the designated person in the Republican caucus to look after the interests of the Republican party with regard to congressional redistricting; was he not?

A. That's not the way I would phrase it. He was the designated person to monitor proposed plans for the Republican party — excuse me — for the General Assembly, as I stated early on, by pursuing fair and neutral redistricting criteria and consistently creating black majority districts where possible. Those were the groundworks we were supposed to have. I acknowledged that it did have an intervening program, and David Balmer acknowledged that it did have the tendency to create a joint Republican district.

* * * *

[1078] Q. Now, with regard to Gastonia, the inclusion of Gastonia, Representative Flaherty was a Republican, is a Republican member of the House of Representatives and was at that time period, was he not?

A. Yes, he was.

Q. And when the House, and when the General Assembly came back into special session during the session when [1079] they adopted Chapter 7, Representative Flaherty put in a two-district redistricting plan, did he not?

A. Yes, he did.

Q. And he had a majority black district, did he not, that ran from Gastonia to Durham?

A. I don't recall that. I believe what you say is true; I don't have a specific recollection of that.

Q. Well, do you recall being asked about that at your deposition?

A. You may have asked, and I don't recall, you may have asked me at the deposition. There I think we had copies of plans to look at when we were answering.

Q. Let me show you what is defendant's Exhibit 8 to your deposition, which has been —

Mr. Farr: Could I see that, Mr. Stein?

A. Okay.

Q. Could you just examine that and see whether or not that is a plan which provides for a majority black district going from Gastonia to Durham?

A. Yes, it does, District 12.

* * * *

TESTIMONY OF MELVIN SHIMM

April 4, 1994

* * * *

[[1084] Q. Professor Shimm, are you and Ms. Shaw in the same precinct in Durham?

A. Yes, we are.

Q. Could you state whether that's a split district?

A. Yes, it is.

Q. Could you state whether you have become aware of any confusion on the part of voters in your precinct as to which of them are in the 24th District and which are in the 2nd District?

A. I certainly have.

* * * *

[1086] Q. Can you state how you became aware of confusion on the part of other voters in your precinct?

A. Well, one instance that's particularly clear in my mind occurred early this spring when I received the only communication, the only communication that I ever received from Congressman Watt's office, which was this brochure listing the availability of constituent services offered by his staff. My next door neighbor, who is a life-long resident of Durham, who is a history teacher in the county [1087] schools and who is recognized nationally in a variety of ways with awards she received.

Mr. Speas: Objection.

Judge Phillips: You don't need to develop this person.

A. In a subsequent conversation with us, said I've heard from Representative Watt. And we said we've heard, too, and she said why in the world would Representative Watt communicate with me. We said well, you're in his district, didn't you know that. She said no,

I didn't know that. Didn't you vote in the last election?
Yes.

She pulled down the Democratic lever with no awareness at all she was voting for Representative Watt.

Also, during the course of this trial, I had been under the impression that the division line in our precinct ran down Academy Road. I had been led to believe this because colleagues of mine who lived on the other side of Academy Road told me they were still in Representative Valentine's district.

I had occasion to look through the book of exhibits that was prepared by Dr. Hofeller and I was curious to see the exact definition of our district. I looked at the precinct. I noticed that the area across Academy Road was in Representative Watt's district.

Here again, there obviously was confusion on the part [1088] of these colleagues of mine who are not illiterate people, who thought they were in Representative Valentine's district although they, in fact, appeared to be in Representative Watt's district.

Q. Now, did you receive any postcard from the Durham County board of elections to show that you were in — the congressional district that you were?

A. I may have very well received it. I don't have any independent recollection of it but I would say to you that I was fully aware of the fact that I was in Representative Watt's district because I followed the matter rather closely and the fact of the matter is that I probably treated any sort of postcard of that sort as being a postcard that's giving me superfluous information. I probably treated it with the respect that I treated with any general mailing that's not addressed to me personally.

Q. You heard Mr. Watt testify about his ability to represent the voters in the 12th district. As one of those

voters, can you state to what extent you believe he's able to represent you?

Mr. Stein: Objection.

Judge Phillips: Overruled.

A. Well, if you ask me if he's able to represent me, and you're inquiring as to his competence, I would have to say he appears to me to be an intelligent man, he appears to [1089] have had experience in politics and in elective office although he was appointed to the office.

He's a graduate of a good law school; some think it's almost as good as Duke. He certainly is a successful lawyer. So, in terms of his competence, I don't have any question about his ability to represent me.

My objection isn't to him personally. I have no objection to Representative Watt as a person. My objection, rather, goes to the circumstances under which he was elected to the position that he now holds which really goes to the matter in which the district is formed. The representation is made —

Mr. Stein: Objection, your honor. This clearly is not —

Judge Phillips: It's unresponsive to the question asked. As far as I can tell, the question is does he have an opinion as to whether he can fairly represent him.

Q. That's right, as to whether he can fairly represent you.

A. May I proceed?

Q. Just direct yourself to that question.

A. All right. Representative Watt was elected as the representative from the district that was deliberately designed to produce a black representative, deliberately [1090] designed to produce a black representative. As such, by his own admission, he perceives his role to be, and I think he is perceived by others, certainly myself,

to be one who regards the black mix of his district as his paramount constituency. He made that particular statement in at least so many words today.

Mr. Stein: Objection.

Judge Phillips: Overruled. Let him go on.

A. To the extent that he sees this constituency the paramount constituents which he must respond, it seems he relegates non-black members of his district to a second class status. Seems to me that this effectively, to that extent, disenfranchises me, and to that extent I do believe that he is unable to represent me as I think my representative should.

I think the problem is compounded by the dysfunctional shape of the district. Charlotte is the demographic center of gravity of the district.

Mr. Speas: Objection. Non-responsive to the question.

Judge Phillips: I take it he's going to say irregular shape also contributes to the inability of Congressman Watt to failing to represent him as a white member living at the other end of the district.

A. Quite so.

[1091] Q. What were you going to say in that regard?

A. I said Representative Watt, representative who is a resident of Charlotte, who is elected largely only by the support from the electorate in Charlotte, is a representative who cannot fairly and does not fairly represent the interests of Durham.

Durham is the high end of a very peculiarly shaped animal in many respects. The fact of the matter is that in Durham he is a very, very faint presence. I think that the local media, not through any animus but only to the fact that he has such low visibility. The local media ignored him, not completely, but comparatively ignored

him and evidence of this is the fact that when the newspapers, for example, carry a story or an editorial and urge their readers to communicate with members of congress, they say if you are from Orange County or Wake County, communicate with Representative Price or Representative Valentine.

Mr. Stein: Objection, move to strike. Hearsay.

Judge Phillips: Sustained. That portion of the answer is stricken.

A. I would say, also, that to the best of my knowledge he's never introduced any sort of legislation that particularly benefits Durham or that particular area.

I would note also that when the Raleigh-Durham Airport was the site of a celebration marking the [1092] inauguration of flights from Raleigh-Durham to England, a matter that received a great deal of local attention and certainly enhanced the pride and the sense that the community would benefit, Representative Price was there, Representative Valentine was there, Representative Watt was nowhere in evidence.

Now, he may have had other important things to do but I have the feeling if this were the Charlotte Airport he would have been there.

In sum, what I'm saying is that owing to the circumstances of which he was elected, the fact that in a sense he has an official mandate, by virtue of the way in which the district was drawn, to represent his black constituency, by virtue of the geographic which encourages him to ignore the interests of people in Durham and perhaps other areas of the district as well. By virtue of this, we are effectively denied representation and this, I regard, a denial of equal proceedings and unfair.

* * * *



1991 CONGRESSIONAL BASE PLAN #6
Chapter 801 of the 1991 Session Laws

August 31, 1995



LEGEND

County Boundary

- District 1
- District 2
- District 3
- District 4
- District 5
- District 6
- District 7
- District 8
- District 9
- District 10
- District 11
- District 12

JA-543

N.C. General Assembly
Legislative Services Ofc.
Redistricting System
Software Copyright 1990
Public Systems Associates

Stipulation Exhibit 10

District Summary
TOTAL POPULATIONS, ALL AGES
 Plan: 1991 Congressional Base Plan #6

<u>District Name</u>	<u>Total Pop.</u>	<u>Total White</u>	<u>Total Black</u>	<u>Total Am. Ind.</u>	<u>Total Asian/PI</u>	<u>Total Other</u>
District 1	552,386 100.00%	238,558 43.19%	307,639 55.69%	3,440 0.62%	1,421 0.26%	1,326 0.24%
District 2	552,386 100.00%	422,316 76.45%	121,012 21.91%	1,864 0.34%	4,236 0.77%	2,961 0.54%
District 3	552,387 100.00%	406,320 73.56%	135,102 24.46%	2,873 0.52%	3,943 0.71%	4,149 0.75%
District 4	552,387 100.00%	429,010 77.66%	108,531 19.65%	1,544 0.28%	10,607 1.92%	2,701 0.49%
District 5	552,386 100.00%	443,553 80.30%	103,627 18.76%	1,042 0.19%	2,544 0.46%	1,620 0.29%
District 6	552,387 100.00%	405,035 73.32%	139,218 25.20%	2,262 0.41%	4,295 0.78%	1,576 0.29%
District 7	552,387 100.00%	362,775 65.67%	134,344 24.32%	45,602 8.26%	4,351 0.79%	5,315 0.96%
District 8	552,386 100.00%	398,020 72.05%	133,287 24.13%	9,149 1.66%	5,683 1.03%	6,247 1.13%
District 9	552,386 100.00%	401,638 72.71%	138,010 24.98%	2,039 0.37%	8,582 1.55%	2,118 0.38%
District 10	552,386 100.00%	487,638 88.28%	59,734 10.81%	1,021 0.18%	3,071 0.56%	922 0.17%
District 11	552,387 100.00%	511,432 92.59%	30,250 5.48%	7,888 1.43%	1,854 0.34%	963 0.17%
District 12	552,386 100.00%	502,197 90.91%	45,575 8.25%	1,432 0.26%	1,579 0.29%	1,603 0.29%
Total	6,628,637 100.00%	5,008,492 75.56%	1,456,329 21.97%	80,156 1.21%	52,166 0.79%	31,501 0.48%

Stipulation Exhibit 10 (cont'd)

District Summary
VOTING AGE POPULATIONS
Plan: 1991 Congressional Base Plan #6

<u>District Name</u>	<u>Total Vot. Age</u>	<u>Vot. Age White</u>	<u>Vot. Age Black</u>	<u>Vot. Age Am. Ind.</u>	<u>Vot. Age Asian/PI</u>	<u>Vot. Age Other</u>
District 1	403,730 100.00%	188,675 46.73%	210,657 52.18%	2,451 0.61%	1,048 0.26%	911 0.23%
District 2	417,372 100.00%	327,799 78.54%	83,153 19.92%	1,289 0.31%	3,164 0.76%	2,013 0.48%
District 3	412,249 100.00%	312,402 75.78%	92,168 22.36%	2,038 0.49%	2,848 0.69%	2,793 0.68%
District 4	428,556 100.00%	338,601 79.01%	79,032 18.44%	1,235 0.29%	7,789 1.82%	1,899 0.44%
District 5	427,308 100.00%	350,285 81.97%	73,404 17.18%	773 0.18%	1,797 0.42%	1,049 0.25%
District 6	427,800 100.00%	321,164 75.07%	100,954 23.60%	1,697 0.40%	2,943 0.69%	1,044 0.24%
District 7	412,308 100.00%	283,667 68.80%	91,753 22.25%	29,794 7.23%	3,142 0.76%	3,952 0.96%
District 8	404,877 100.00%	302,323 74.67%	88,423 21.84%	5,963 1.47%	4,016 0.99%	4,152 1.03%
District 9	418,549 100.00%	314,959 75.25%	94,789 22.65%	1,472 0.35%	5,860 1.40%	1,472 0.35%
District 10	418,574 100.00%	374,915 89.57%	40,392 9.65%	759 0.18%	1,871 0.45%	637 0.15%
District 11	430,245 100.00%	402,078 93.45%	21,143 4.91%	5,160 1.20%	1,261 0.29%	603 0.14%
District 12	420,919 100.00%	385,695 91.63%	32,008 7.60%	1,037 0.25%	1,085 0.26%	1,094 0.26%
Total	5,022,487 100.00%	3,902,563 77.70%	1,007,876 20.07%	53,668 1.07%	36,824 0.73%	21,619 0.43%

Stipulation Exhibit 10 (cont'd)

District Summary

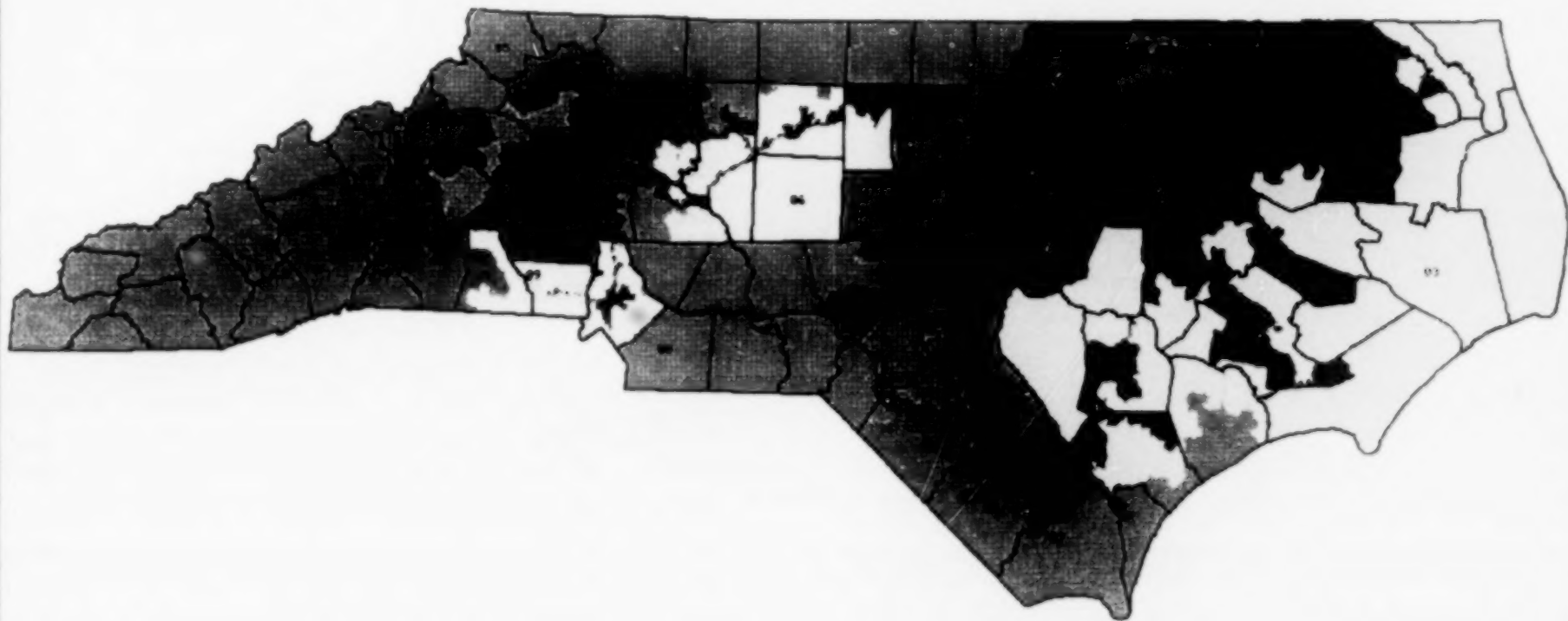
REGISTRATION

Plan: 1991 Congressional Base Plan #6

<u>District Name</u>	<u>Total Reg.</u>	<u>White Reg.</u>	<u>Black Reg.</u>	<u>Other Reg.</u>	<u>Dem. Reg.</u>	<u>Repub. Reg.</u>
District 1	276,192 100.00%	132,170 47.85%	141,809 51.34%	2,214 0.80%	239,773 86.81%	29,442 10.66%
District 2	270,125 100.00%	223,873 82.88%	44,324 16.41%	1,932 0.72%	191,823 71.01%	65,441 24.23%
District 3	249,138 100.00%	194,731 78.16%	53,392 21.43%	1,012 0.41%	176,308 70.77%	62,454 25.07%
District 4	301,423 100.00%	249,047 82.62%	50,738 16.83%	1,636 0.54%	187,834 62.32%	88,310 29.30%
District 5	294,809 100.00%	247,710 84.02%	46,589 15.80%	541 0.18%	176,112 59.74%	99,839 33.87%
District 6	304,099 100.00%	232,639 76.50%	70,549 23.20%	882 0.29%	191,705 63.04%	93,888 30.87%
District 7	240,408 100.00%	165,152 68.70%	55,300 23.00%	19,961 8.30%	176,690 73.50%	55,123 22.93%
District 8	234,182 100.00%	183,139 78.20%	48,726 20.81%	2,311 0.99%	152,925 65.30%	68,294 29.16%
District 9	303,031 100.00%	238,242 78.62%	63,474 20.95%	1,315 0.43%	167,892 55.40%	112,424 37.10%
District 10	268,939 100.00%	243,024 90.36%	25,575 9.51%	344 0.13%	144,322 53.66%	107,779 40.08%
District 11	320,051 100.00%	304,146 95.03%	13,559 4.24%	2,342 0.73%	188,649 58.94%	112,071 35.02%
District 12	281,460 100.00%	261,816 93.02%	19,280 6.85%	365 0.13%	128,727 45.74%	137,752 48.94%
Total	3,343,857 100.00%	2,675,689 80.02%	633,315 18.94%	34,855 1.04%	2,122,760 63.48%	1,032,817 30.89%

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MAP 1
NORTH CAROLINA
CURRENT CONGRESSIONAL DISTRICTS

JA-549

JA-551

Stipulation Exhibit 10

District Summary
TOTAL POPULATIONS, ALL AGES
 Plan: 1992 Congressional Base Plan #10

<u>District Name</u>	<u>Total Pop.</u>	<u>Total White</u>	<u>Total Black</u>	<u>Total Am. Ind.</u>	<u>Total Asian/PI</u>	<u>Total Other</u>
District 1	552,386 100.00%	229,829 41.61%	316,290 57.26%	3,424 0.62%	1,146 0.21%	1,698 0.31%
District 2	552,386 100.00%	421,083 76.23%	121,212 21.94%	3,154 0.57%	4,077 0.74%	2,860 0.52%
District 3	552,387 100.00%	423,398 76.65%	118,640 21.48%	2,436 0.44%	4,044 0.73%	3,869 0.70%
District 4	552,387 100.00%	426,361 77.19%	111,168 20.13%	1,548 0.28%	10,602 1.92%	2,714 0.49%
District 5	552,386 100.00%	463,183 83.85%	83,824 15.17%	1,083 0.20%	2,448 0.44%	1,848 0.33%
District 6	552,386 100.00%	504,465 91.32%	41,329 7.48%	1,973 0.36%	3,489 0.63%	1,129 0.20%
District 7	552,386 100.00%	394,855 71.48%	103,428 18.72%	40,166 7.27%	5,835 1.06%	8,102 1.47%
District 8	552,387 100.00%	402,406 72.85%	128,417 23.25%	13,789 2.50%	4,232 0.77%	3,543 0.64%
District 9	552,387 100.00%	492,424 89.14%	49,308 8.93%	1,729 0.31%	7,373 1.33%	1,553 0.28%
District 10	552,386 100.00%	517,542 93.69%	30,155 5.46%	942 0.17%	2,238 0.41%	1,510 0.27%
District 11	552,387 100.00%	502,058 90.89%	39,767 7.20%	7,835 1.42%	1,791 0.32%	936 0.17%
District 12	552,386 100.00%	230,888 41.80%	312,791 56.63%	2,077 0.38%	4,891 0.89%	1,739 0.31%
Total	6,628,637 100.00%	5,008,492 75.56%	1,456,329 21.97%	80,156 1.21%	52,166 0.79%	31,501 0.48%

Stipulation Exhibit 10 (cont'd)

District Summary
VOTING AGE POPULATIONS, ALL AGES
 Plan: 1992 Congressional Base Plan #10

<u>District Name</u>	<u>Total Vot. Age</u>	<u>Vot. Age White</u>	<u>Vot. Age Black</u>	<u>Vot. Age Am. Ind.</u>	<u>Vot. Age Asian/PI</u>	<u>Vot. Age Other</u>
District 1	399,969 100.00%	181,933 45.49%	213,602 53.40%	2,428 0.61%	844 0.21%	1,110 0.28%
District 2	420,087 100.00%	328,676 78.24%	84,311 20.07%	2,173 0.52%	3,074 0.73%	1,963 0.47%
District 3	413,263 100.00%	324,808 78.60%	81,170 19.64%	1,755 0.42%	2,922 0.71%	2,608 0.63%
District 4	428,984 100.00%	336,850 78.52%	81,210 18.93%	1,239 0.29%	7,782 1.81%	1,903 0.44%
District 5	428,782 100.00%	364,886 85.10%	60,204 14.04%	822 0.19%	1,650 0.38%	1,221 0.28%
District 6	428,096 100.00%	393,271 91.87%	30,188 7.05%	1,433 0.33%	2,407 0.56%	798 0.19%
District 7	414,413 100.00%	306,754 74.02%	71,071 17.15%	26,489 6.39%	4,201 1.01%	5,898 1.42%
District 8	403,678 100.00%	305,366 75.65%	84,386 20.90%	8,699 2.15%	2,956 0.73%	2,271 0.56%
District 9	421,615 100.00%	380,364 90.22%	33,849 8.03%	1,275 0.30%	5,059 1.20%	1,069 0.25%
District 10	421,456 100.00%	397,476 94.31%	20,837 4.94%	700 0.17%	1,409 0.33%	1,036 0.25%
District 11	430,457 100.00%	396,064 92.01%	27,438 6.37%	5,126 1.19%	1,237 0.29%	592 0.14%
District 12	411,687 100.00%	186,115 45.21%	219,610 53.34%	1,529 0.37%	3,283 0.80%	1,150 0.28%
Total	5,022,487 100.00%	3,902,563 77.70%	1,007,876 20.07%	53,668 1.07%	36,824 0.73%	21,619 0.43%

Stipulation Exhibit 10 (cont'd)

District Summary

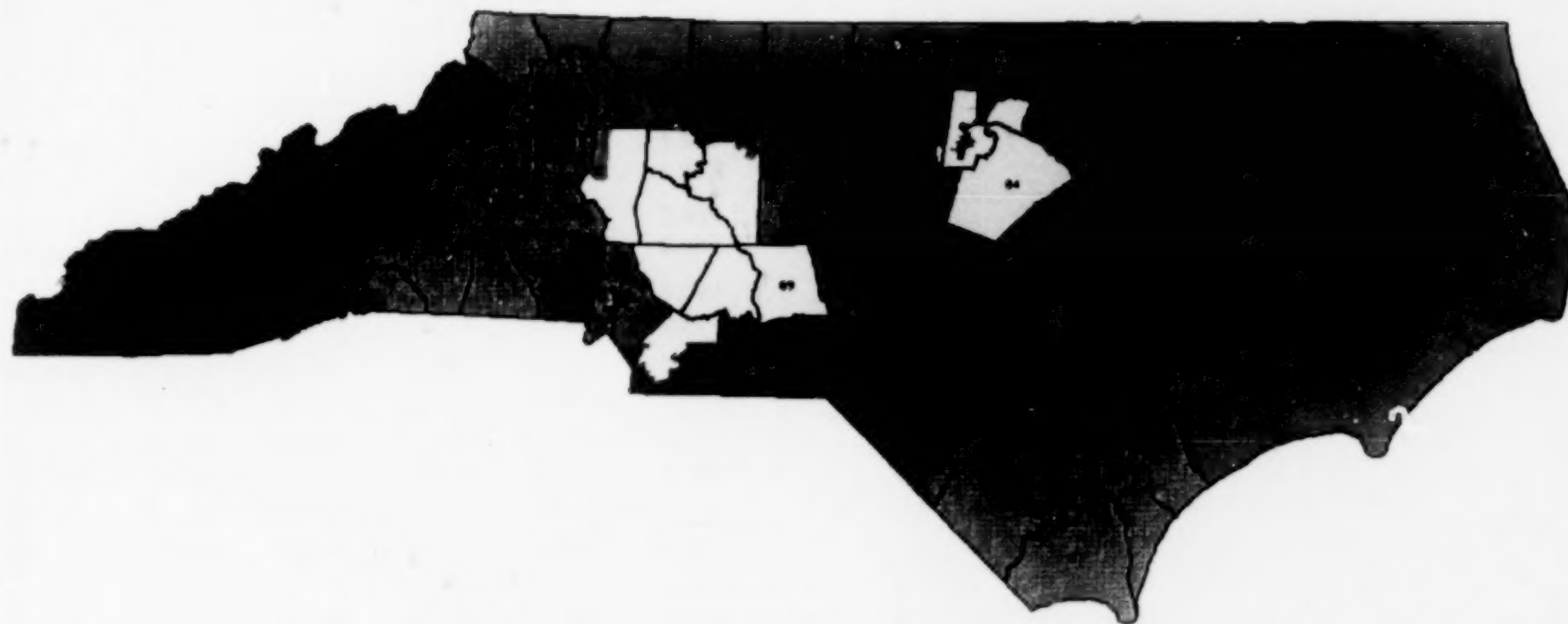
REGISTRATION

Plan: 1992 Congressional Base Plan #10

District Name	Total Reg.	White Reg.	Black Reg.	Other Reg.	Dem. Reg.	Repub. Reg.
District 1	270,229 110.00%	132,323 48.97%	136,536 50.53%	1,296 0.48%	235,445 87.13%	29,509 10.92%
District 2	270,061 100.00%	219,727 81.36%	48,153 17.83%	2,196 0.81%	190,564 70.56%	66,366 24.57%
District 3	248,318 100.00%	201,699 81.23%	45,684 18.40%	955 0.38%	173,132 69.72%	64,771 26.08%
District 4	306,226 100.00%	250,780 81.89%	53,212 17.38%	2,238 0.73%	191,876 62.66%	88,762 28.99%
District 5	293,437 100.00%	255,458 87.06%	37,427 12.75%	550 0.19%	178,786 60.93%	97,316 33.16%
District 6	292,842 100.00%	273,216 93.30%	18,907 6.46%	726 0.25%	145,337 49.63%	128,153 43.76%
District 7	218,613 100.00%	162,148 74.17%	38,413 17.57%	18,104 8.28%	154,517 70.68%	55,296 25.29%
District 8	254,082 100.00%	197,961 77.91%	52,140 20.52%	3,973 1.56%	166,645 65.59%	74,262 29.23%
District 9	296,124 100.00%	270,843 91.46%	24,125 8.15%	1,154 0.39%	148,223 50.05%	124,786 42.14%
District 10	297,917 100.00%	283,928 95.30%	13,611 4.57%	398 0.13%	135,660 45.54%	142,775 47.92%
District 11	318,958 100.00%	299,765 93.98%	16,847 5.28%	2,338 0.73%	192,259 60.28%	107,923 33.84%
District 12	283,076 100.00%	129,930 45.90%	151,555 53.54%	1,568 0.55%	216,967 76.65%	51,900 18.33%
Total	3,349,883 100.00%	2,677,778 79.94%	636,610 19.00%	35,496 1.06%	2,129,411 63.57%	1,031,819 30.80%

JA-554

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MAP 2
NORTH CAROLINA
SHAW II
SAMPLE PLAN FOR COMPARISON

JA-555

Plaintiff-Intervenors' Exhibit 301

District Summary
TOTAL POPULATIONS, ALL AGES
 Plan: SHAW PLAN 2

Plan type: Congressional Base Plan

<u>District Name</u>	<u>Total Pop.</u>	<u>Total White</u>	<u>Total Black</u>	<u>Total Am. Ind.</u>	<u>Total Asian/PI</u>	<u>Total Other</u>
District 1	552,386 100.00%	243,481 44.08%	302,681 54.80%	3,542 0.64%	1,276 0.23%	1,407 0.25%
District 2	552,387 100.00%	418,386 75.74%	121,043 21.91%	2,001 0.36%	5,179 0.94%	5,778 1.05%
District 3	552,387 100.00%	248,297 44.95%	246,325 44.59%	44,065 7.98%	7,055 1.28%	6,645 1.20%
District 4	552,386 100.00%	430,608 77.95%	106,257 19.24%	1,445 0.26%	11,594 2.10%	2,488 0.45%
District 5	552,386 100.00%	427,277 77.35%	115,997 21.00%	2,042 0.37%	3,730 0.68%	3,340 0.60%
District 6	552,386 100.00%	427,910 77.47%	116,258 21.05%	2,361 0.43%	4,525 0.82%	1,331 0.24%
District 7	552,387 100.00%	399,948 72.40%	134,949 24.43%	11,462 2.07%	2,689 0.49%	3,339 0.60%
District 8	552,386 100.00%	439,504 79.56%	107,751 19.51%	1,068 0.19%	2,083 0.38%	1,980 0.36%
District 9	552,387 100.00%	473,418 85.70%	73,812 13.36%	1,611 0.29%	2,177 0.39%	1,369 0.25%
District 10	552,386 100.00%	485,484 87.89%	56,038 10.14%	1,799 0.33%	7,409 1.34%	1,657 0.30%
District 11	552,386 100.00%	495,705 89.74%	52,075 9.43%	877 0.16%	2,533 0.46%	1,196 0.22%
District 12	552,387 100.00%	518,474 93.86%	23,143 4.19%	7,883 1.43%	1,916 0.35%	971 0.18%
Total	6,628,637 100.00%	5,008,492 75.56%	1,456,329 21.97%	80,156 1.21%	52,166 0.79%	31,501 0.48%

Plaintiff-Intervenors' Exhibit 301 (cont'd)

District Summary
VOTING AGE POPULATIONS
Plan: SHAW PLAN 2

Plan type: Congressional Base Plan

<u>District Name</u>	<u>Total Vot. Age</u>	<u>Vot. Age White</u>	<u>Vot. Age Black</u>	<u>Vot. Age Am. Ind.</u>	<u>Vot. Age Asian/PI</u>	<u>Vot. Age Other</u>
District 1	404,419 100.00%	192,884 47.69%	207,184 51.23%	2,506 0.62%	918 0.23%	986 0.24%
District 2	417,022 100.00%	323,471 77.57%	84,011 20.15%	1,543 0.37%	3,703 0.89%	4,294 1.03%
District 3	394,582 100.00%	191,192 48.45%	165,494 41.94%	28,520 7.23%	4,952 1.25%	4,424 1.12%
District 4	427,417 100.00%	338,543 79.21%	77,488 18.13%	1,137 0.27%	8,506 1.99%	1,743 0.41%
District 5	421,776 100.00%	334,525 79.31%	80,719 19.14%	1,462 0.35%	2,800 0.66%	2,269 0.54%
District 6	427,531 100.00%	337,785 79.01%	83,989 19.65%	1,744 0.41%	3,106 0.73%	908 0.21%
District 7	411,003 100.00%	308,205 74.99%	90,909 22.12%	7,681 1.87%	1,985 0.48%	2,223 0.54%
District 8	424,770 100.00%	344,221 81.04%	76,976 18.12%	815 0.19%	1,503 0.35%	1,256 0.30%
District 9	418,253 100.00%	364,098 87.05%	50,730 12.13%	1,135 0.27%	1,412 0.34%	878 0.21%
District 10	421,784 100.00%	375,916 89.13%	38,306 9.08%	1,307 0.31%	5,095 1.21%	1,162 0.28%
District 11	420,411 100.00%	381,870 90.83%	35,549 8.46%	653 0.16%	1,504 0.36%	836 0.20%
District 12	433,519 100.00%	409,853 94.54%	16,521 3.81%	5,165 1.19%	1,340 0.31%	640 0.15%
Total	5,022,487 100.00%	3,902,563 77.70%	1,007,876 20.07%	53,668 1.07%	36,824 0.73%	21,619 0.43%

Plaintiff-Intervenors' Exhibit 301 (cont'd)

District Summary
REGISTRATION
 Plan: SHAW PLAN 2

Plan type: Congressional Base Plan

<u>District Name</u>	<u>Total Reg.</u>	<u>White Reg.</u>	<u>Black Reg.</u>	<u>Other Reg.</u>	<u>Dem. Reg.</u>	<u>Repub. Reg.</u>
District 1	276,045 100.00%	137,522 49.82%	136,389 49.41%	2,146 0.78%	241,232 87.39%	28,709 10.40%
District 2	224,202 100.00%	181,595 81.00%	41,947 18.71%	658 0.29%	158,505 70.70%	54,663 24.38%
District 3	226,869 100.00%	108,125 47.66%	100,132 44.14%	18,636 8.21%	182,231 80.32%	35,350 15.58%
District 4	304,152 100.00%	250,580 82.39%	50,260 16.52%	3,298 1.08%	186,382 61.28%	90,233 29.67%
District 5	268,207 100.00%	221,818 82.70%	45,408 16.93%	988 0.37%	183,396 68.38%	72,005 26.85%
District 6	302,567 100.00%	240,373 79.44%	61,337 20.27%	849 0.28%	173,564 57.36%	109,104 36.06%
District 7	271,479 100.00%	207,411 76.40%	59,992 22.10%	4,073 1.50%	192,987 71.09%	69,514 25.61%
District 8	287,175 100.00%	237,846 82.82%	48,770 16.98%	559 0.19%	174,343 60.71%	96,669 33.66%
District 9	275,049 100.00%	241,600 87.84%	33,042 12.01%	409 0.15%	151,951 55.25%	108,508 39.45%
District 10	297,525 100.00%	269,814 90.69%	26,514 8.91%	1,184 0.40%	147,642 49.62%	126,449 42.50%
District 11	286,373 100.00%	263,976 92.18%	22,042 7.70%	343 0.12%	156,313 54.58%	112,777 39.38%
District 12	330,240 100.00%	317,118 96.03%	10,777 3.26%	2,353 0.71%	180,865 54.77%	127,838 38.71%
Total	3,349,883 100.00%	2,677,778 79.94%	636,610 19.00%	35,496 1.06%	2,129,411 63.57%	1,031,819 30.80%

Plaintiff-Intervenors' Exhibit 301 (cont'd)

District Summary
ELECTIONS
 Plan: SHAW PLAN 2

Plan type: Congressional Base Plan

<u>District Name</u>	<u>Senate Gantt</u>	<u>Senate Helms</u>	<u>Lt. Gov Rand</u>	<u>Lt.Gov Gardner</u>	<u>Court Lewis</u>	<u>Court Smith</u>
District 1	96,148 59.01%	66,794 40.99%	104,617 65.99%	53,920 34.01%	108,448 73.40%	39,296 26.60%
District 2	58,305 43.48%	75,781 56.52%	67,631 48.37%	72,190 51.63%	71,277 55.03%	58,252 44.97%
District 3	86,257 68.21%	40,198 31.79%	80,666 69.69%	35,081 30.31%	72,994 71.05%	29,739 28.95%
District 4	107,267 55.64%	85,514 44.36%	94,449 49.87%	94,923 50.13%	80,241 47.54%	88,558 52.46%
District 5	73,837 43.69%	95,157 56.31%	81,555 48.41%	86,923 51.59%	81,330 52.38%	73,948 47.62%
District 6	79,691 45.78%	94,372 54.22%	82,396 48.00%	89,278 52.00%	72,357 45.59%	86,343 54.41%
District 7	71,557 45.12%	87,040 54.88%	89,740 54.50%	74,910 45.50%	84,999 55.86%	67,166 44.14%
District 8	73,469 42.32%	100,151 57.68%	89,686 48.43%	95,498 51.57%	82,377 48.90%	86,078 51.10%
District 9	63,828 37.50%	106,377 62.50%	77,292 43.09%	102,063 56.91%	72,339 42.33%	98,547 57.67%
District 10	82,446 45.78%	97,632 54.22%	71,995 40.43%	106,063 59.57%	57,372 36.45%	100,006 63.55%
District 11	69,416 39.40%	106,760 60.60%	80,638 43.56%	104,489 56.44%	78,796 44.20%	99,462 55.80%
District 12	88,720 45.90%	104,587 54.10%	94,490 46.14%	110,319 53.86%	90,551 47.26%	101,056 52.74%
Total	950,941 47.28%	1,060,363 52.72%	1,015,155 49.74%	1,025,657 50.26%	953,081 50.65%	928,451 49.35%

Defendant's Exhibit 403

**A HISTORICAL PERSPECTIVE
ON NORTH CAROLINA'S PIEDMONT CRESCENT
AND "DOWN EAST" CONGRESSIONAL DISTRICTS**

By David R. Goldfield

I have been retained by the State of North Carolina because of my expertise in Southern urbanization and race relations. I teach Southern history, urban history, and the civil rights era at the University of North Carolina at Charlotte where I have been the Robert Lee Bailey Professor of History since 1982. I have written or edited ten books on various aspects of Southern history, urbanization and race relations. Two of my books have received the Mayflower Award for Non-Fiction (in 1983 and 1991) and one book was nominated for the Pulitzer Prize in history. In addition, I have written numerous articles for scholarly refereed journals, as well as for the popular press. I serve as Editor-in-Chief of the *Journal of Urban History*, the leading international journal in urban history, and on the Executive Council of the Southern Historical Association. For the past six years, I have worked periodically for the United States Information Agency making presentations on race relations and urbanization to business and educational groups in Asia and Europe. Finally, I serve as consultant to numerous historical museums in the South, including the Museum of the Confederacy, the Valentine Museum, the Memphis City Museum, and the Museum of the New South. I am currently writing a history of the South for D.C. Heath Publishing Company.

My role in this case is to answer three questions. First, does the particular part of the Piedmont Crescent encompassed by the Twelfth Congressional District have historical integrity? Second, how has the Piedmont Crescent differed historically from other parts of the state? And third, how have the lives of blacks in [sic]

whites differed in urban and rural North Carolina over the past century, with particular reference to the Twelfth and First Congressional Districts.

The 12th Congressional District traces the spine of the North Carolina Piedmont Crescent. A swath of territory bending from Raleigh to Charlotte, the Crescent is part of the larger Piedmont region of North Carolina. Lacking the majesty of the mountains to the west or the anticipation of the coastal plain as it slopes toward the splendid beaches to the east the Piedmont has not figured significantly in regional romance. Thomas Wolfe wrote often about this region, and seldom in flattering terms. In *Look Homeward, Angel*, Oliver Gant stares out from his train window and sees "the fallow unworked earth, the great raw lift of the Piedmont, the muddy red clay roads, and the slattern people." From this unpromising landscape, however, rose the urban, economic, and cultural heart and soul of the state of North Carolina, the Piedmont Crescent, a region of hope for its citizens, and a place of opportunity for newcomers from all over the world.

Few would have presumed such a destiny for the Piedmont or for North Carolina one hundred and fifty years ago. Known as the "Rip Van Winkle State," North Carolina boasted few towns and large plantations, and those were concentrated in the eastern part of the state. Geography cut off residents west of the fall line from the coast. Seldom trading with each other, often at odds over political issues, and ethnically and racially different — the Piedmont was home to a large Scotch-Irish and German population, and relatively few slaves and free blacks — the eastern and western parts of the state diverged as much as two parts of the same political entity could.

The sectional estrangement contributed to the state's weak, subsistence economy before the Civil War. Coast and Piedmont were isolated from each other and the divided state had few connections to the developing

national economy beyond its borders. But in the 1840s, leaders from both sections proposed a common solution to North Carolina's chronic economic problems. A railroad spanning the length of the Piedmont Crescent would tie the sections together and bring prosperity to both. The state legislature chartered the North Carolina Railroad in 1849 and financed three-quarters of the total construction cost. Completed in 1856 and running from Goldsboro to Raleigh, and then to Salisbury and Charlotte, the North Carolina Railroad was hailed by legislators as an "Iron Messiah," destined to deliver the state from economic dependence.

Deliverance came, but in ways unexpected by the railroad's promoters. Leaders in eastern North Carolina hoped that the railroad could revive the district's somnolent ports as commerce from the Piedmont and points west poured into the area. Piedmonters, however, viewed the railroad as a means to connect with other roads in Virginia and South Carolina to tap the markets of the Deep South and the urban Northeast. Of these two visions — the east-west hope of eastern North Carolina, and the north-south network sought by Piedmont residents — the latter prevailed when military necessity during the Civil War resulted in a link between the North Carolina Railroad and the Richmond and Danville line to the north. After the war, the regularization of gauges throughout the country and the eventual consolidation of the North Carolina Railroad into J. P. Morgan's Southern Railway empire in 1894, secured the Piedmont's wishes for a north-south route and dashed eastern residents' hopes for an economic revival. Ironically, the project that promoters designed to bring the state together resulted in widening the differences between the Piedmont and the coastal plain.

The North Carolina Railroad helped to define a subregion of the Piedmont, the Piedmont Crescent, but it did not precipitate an economic revolution along its tracks

after the Civil War. Small towns dotted the route, but significant urbanization did not occur. As the state's railroad became integrated into a national system, the Piedmont Crescent served as a way-station between the Deep South and the Northeast funneling raw materials northward and providing easier access for Northern manufactured products into Southern markets. But if the railroad reinforced North Carolina's role as an economic colony, its presence in the Piedmont also served as a catalyst for industrial activity.

First, the railroad brought people to the small towns that grew up around the tracks. Like Washington Duke who moved to Durham in 1874 to build a steam-powered factory near the railroad to move his tobacco around the country, or his enterprising son, James B., who brought Russian Jewish immigrants down from New York to teach his employees the art of hand-rolling a cigarette, and who took the railroad to visit Richmond in 1884 where he first saw a not-too-reliable machine that did the rolling one hundred times faster when it worked at all, and who built a tobacco empire, the American Tobacco Company, once he perfected the balky machine.

Or D. A. Tompkins of Edgefield, South Carolina, who came to Charlotte in the 1870s with an engineering degree from a school in New York, and who stood at the railroad depot and watched carload after carload of raw cotton bound for the North and wondered why the South and North Carolina in particular grew all that cotton and yet processed so little of it. And he wondered how the sallow-complected sons and daughters of sharecroppers and tenants of whom there were too many for the bleeding Piedmont soil to support, could survive in a region blasted by war and suffocated by poverty. So he launched a cotton mill campaign up and down the Piedmont Crescent in the 1880s. Tompkins' efforts bore fruit. By 1900 more than one-half of the looms in the South were located within a 100-mile radius of Charlotte.

Or George Black, whose grandmother and father were slaves and who walked to Winston in 1889 from a five-acre farm in Randolph County because he and his father had heard there were opportunities there, even for blacks. He lived in a one-room tenement with eleven other people and worked at hauling bricks. Within a few years, Black built his own brickyard and soon white contractors were buying his high-quality work. His bricks today form the sidewalk at Old Salem, as well as the site's market firehouse.

The Piedmont Crescent towns, modest though they were (Charlotte had little more than 2,000 residents in 1880), provided opportunities for enterprising young men and women of both races. They offered a market for products and work for those who needed it. By the early 1900s, the Piedmont Crescent towns along the Southern Railway (formerly the North Carolina Railroad) were workshops in creation. Lunsford Richardson, a Davidson College graduate, settled in Greensboro just after the turn of the century and founded the Vick Chemical Company where he developed Vick's Vaporub in 1912. In Durham at the same time, a young druggist, Germain Bernard, dispensed headache powders for customers who staggered into his pharmacy with hangovers. The results were so successful that he began marketing his concoction as BC Headache Powder. A rival druggist, Tom Stanback in Salisbury, marketed his own headache mix which he promoted with the phrase, "Snap Back with Stanback."

In High Point, a group of woodworkers expanded their shops, taking advantage of good railroad connections and proximity to hardwoods to develop a thriving furniture industry that boasted twenty-six manufacturers by 1902. The industry spread to smaller communities such as Thomasville and Lexington.

The capital generated from textile, tobacco, and furniture spawned other activities that expanded the Pied-

mont Crescent economy and encouraged the growth of the region's towns. Money from Dick Reynolds' tobacco company in Winston supported the establishment of Wachovia Bank and Trust Company. Financing the textile mills and machinery firms in and around Charlotte enabled a few merchants and developers to pool their resources and establish several banks by 1900, the forerunner of that city's financial empire. The savings of Durham's blacks created the "Negro Wall Street of America" in downtown Durham early in the century, capped off in 1921 by the six-story building of the North Carolina Mutual Life Insurance Company, the largest black-owned business in the South. These financial institutions contributed to the continued prosperity of the Piedmont Crescent. Dependence on Northern banks had foisted high interest rates and unattractive repayment provisions on firms seeking to expand or refinance their operations.

Profits from Piedmont Crescent enterprises found other outlets as well. James B. Duke funneled capital from his successful American Tobacco Company to a new endeavor, the Southern Power Company. Supplying business and industry with cheap and reliable electricity freed entrepreneurs from dependence on steam or water power. The Duke family also endowed Trinity College in Durham which became Duke University. Dick Reynolds established a foundation for the arts and education that propelled North Carolina into the forefront of philanthropic support for research and creativity. By the 1920s, struggling colleges such as Wake Forest, the state universities at Chapel Hill and Raleigh, and the woman's college at Greensboro received better funding and better-trained faculty. Earlier, the movement of blacks to Piedmont Crescent towns resulted in the founding of several church-related institutions of higher education such as Shaw University in Raleigh, the Biddle Institute (later Johnson C. Smith University) in Charlotte, and in 1910, North Carolina College (now North Carolina Cen-

tral) in Durham, the first state-supported liberal arts college for blacks in the United States.

By 1920 a major regional shift had occurred in North Carolina. Before the Civil War, the economic and demographic center of the state lay east of Raleigh. The pattern of scattered towns and small farms that characterized the east, characterized the state. After the war, while the east languished, the Piedmont Crescent grew; and by the 1890s, it was booming. Urban concentrations were building along several points of the corridor from Raleigh to Charlotte. The shift in North Carolina reflected the change occurring across the South in the late nineteenth century as coastal areas lost their primacy and interior places such as Atlanta, Birmingham, and Nashville replaced them. Railroads, industry, and the people and the innovative ideas they brought accounted in great part for these changes.

In some cases, the changes were enormous. By the early 1900s, more than 200,000 North Carolinians had left the farm to work in the textile mills of the Piedmont. They had given up a life of chronic poverty and uncertainty for "public" work where a regular paycheck, sometimes a house, and frequently a better diet improved their lives. The ten- or twelve-hour factory shifts might seem excessive to an observer today, but to those accustomed to the grinding routines of farm life, punching a time clock was not a particularly difficult adjustment. Competition between mills up and down the Piedmont Crescent enabled workers to use the region as a giant labor exchange. The Piedmont Crescent became what journalist Arthur W. Page characterized in 1907 as "one long mill village," where throughout the region, workers shared kin, experiences, and popular culture such as music and dance, often promoted through clear-channel radio station, WBT in Charlotte. Lacy Wright, who worked in Greensboro's White Oak Mill in the twenties and thirties, noted that "We had a pretty fair

picture, generally speaking, of what you might say was a 200-mile radius of Greensboro."

As the mill villages knitted the Piedmont Crescent together, larger nodes such as Durham, Winston-Salem, Greensboro, and Charlotte provided goods and services to support new economic enterprises. The Piedmont Crescent, a region of dispersed small towns and farms in the late nineteenth century, was emerging as an urban region by 1920.

The energy of North Carolina centered in the Piedmont Crescent. Entrepreneurial activity, inventions, and migration gravitated to the region's towns and cities after 1900. As the urban middle class expanded, the cities became focal points for statewide reform efforts, often led by middle-class white and black women. Organizations such as the Women's Christian Temperance Union and the Woman's Association for the Betterment of Public School Houses originated in Piedmont cities and expanded their work throughout the state. Daisy Denson of the Woman's Club in Raleigh contracted with planner Charles Mulford Robinson in 1912 to produce the first comprehensive city plan in North Carolina.

Blacks found opportunities in Piedmont Crescent cities as well. Aside from occupational and educational attractions, cities offered an array of voluntary associations and churches that enriched black life. While the eastern part of North Carolina provided the vast majority of black migrants to the North in the half century after 1910, blacks in the Piedmont moved from farms and small towns to places like Charlotte and Greensboro and stayed. Blacks in eastern North Carolina had many fewer nearby urban places to consider. Also, the tenor of race relations in the eastern portion of the state with its relatively large black population discouraged black ambition. A vicious race riot in Wilmington in 1898 reflected the harsh realities of race relations in eastern North Carolina.

This is not to say that Piedmont blacks encountered few frustrations when they moved to the Crescent's cities after 1900. Moving to town, they encountered an elaborate racial etiquette designed to separate them from whites and underscore their inferiority. Although many have viewed segregation as a remnant of Old South white supremacy, the institution in fact accompanied the modernization of North Carolina. As towns grew into cities, as neighborhoods spread beyond their customary boundaries, and as technology spurred inventions such as the electric trolley and the elevator, codified segregation emerged as a mechanism to separate the races and delineate their place in urban society. The words "white" and "colored" circumscribed the lives of blacks in the urban Piedmont Crescent. Worse were the signs without words: the black neighborhood where the pavement and city services ended; the dilapidated one-room wooden structure that served as a school for over one hundred black children; the parks blacks could not enter, the restaurants where they could not eat, and the jobs they could not apply for. In many Piedmont Crescent communities, the railroad defined the boundary line between whites and blacks as they lived their parallel but distinctive lives respectively on each side of the tracks.

Blacks lacked the political clout to challenge these indignities. In 1900 a new state constitution effectively disfranchised black North Carolinians. A relatively few blacks voted, almost all of these in the Piedmont Crescent cities where a solid community of middle class blacks existed. In the rural areas, especially in the eastern part of the state, blacks dared not venture to the polls.

Blacks built communities within the confining boundaries of segregation in the urban Piedmont Crescent. Every city in the Crescent had distinctive black neighborhoods such as Hayti in Durham and Brooklyn in

Charlotte, a black business district, black churches, black radio stations, black schools, and black entertainment. While these separate institutions reflected a segregated urban society, they also represented the strength and resources of a black community thrown back on itself and left to its own devices to function in the city as best as possible. The churches, businesses, schools, and voluntary associations for black men and women were training grounds for the civil rights movement and political organizing of the postwar era. These Piedmont Crescent cities experienced the first struggles for freedom such as school desegregation and the integration of public facilities. In Greensboro in February 1960, four black freshmen from North Carolina A&T sat in at the Woolworth lunch counter and triggered demonstrations across the South that eventually demolished segregation in public accommodations.

For blacks in rural North Carolina, especially in the eastern part of the state, life was very different. There were many fewer urban alternatives. Signs rarely appeared on the farm, but the grinding poverty, the absence of educational institutions, the high mortality rate, and the lack of job opportunities stunted the development of black institutions. Bereft of white friends, blacks in eastern North Carolina could only fall back on themselves and find very little to sustain them. Those young enough to escape did, and boarded the "Chicken-Bone Special" to resume life up North which, if only marginally better, at least held out a small hope for improvement. Those who could not wrestled with the debilities of an impoverished rural society. In the 1970s, a Navy recruiter in Northampton reported that "ninety percent of the students in this area flunk the Navy entrance test, whereas kids up in Guilford County [Greensboro] with just a GED do better than those 'down East' who have a high-school diploma."

The distinctive experiences of blacks in the Piedmont Crescent and "down East" reflected an even greater change that occurred in North Carolina after World War II. The differences between the two sections were apparent as early as 1920 when urbanization surged in the Crescent. But the gap widened after 1945.

North Carolina was becoming an urban state, especially in the Piedmont Crescent. Federal agricultural policies and mechanization changed the nature of Southern agriculture. In North Carolina, tenants had accounted for more than half the state's farmers in 1930; by 1980, the figure was less than 5 percent. The number of black tenants dropped from 25,000 in 1959 to 3,500 by 1970. Displaced farmers went North, especially from the eastern part of the state, or to the cities of the Piedmont. One in ten North Carolinians resided in towns or cities in 1900; by 1990, the majority of the state's residents were urban.

But urbanization occurred unevenly across the state. As the state's economy began to concentrate in the Piedmont Crescent after 1880, so did cities. The corridor from Raleigh to Charlotte, roughly following the tracks of the Southern Railway, emerged as the most urbanized portion of the state. Three major urban agglomerations appeared after World War II. The Triangle area encompassing Raleigh, Durham, and Chapel Hill became the location of the state's leading institutions of higher education and, in 1959, the site of the Research Triangle Park, a unique partnership between government, education, and private industry that served as a high-tech catalyst for the region. Further west, the Triad district, including High Point, Winston-Salem, and Greensboro, represented the heart of the Piedmont Crescent's industrial legacy. Charlotte, a sprawling egg-yolk of a city by 1990, benefited most from the postwar economic boom in North Carolina. Building on its proximity to a vast textile empire, Charlotte erected a financial network

that soon rivaled major cities outside the South. After World War II, the city used its rail connections and its reputation as a trucking center to become a major wholesale and transportation hub. Charlotte-Douglas International Airport and the extensive interstate highway network integrated the city's economy into national and international markets.

When, in 1993, the city marketed itself to the National Football League, civic leaders employed the regional logic that Greensboro textile worker Lacy Wright voiced two decades earlier. For Charlotte entrepreneurs, the Piedmont Crescent had become a vast, interconnected urban region, a market extending eastward to the Triangle area and south into South Carolina. While striking some as another example of Charlotte's overweening pride, the presentation made good historical sense.

Over the past century, the North Carolina Piedmont Crescent had in fact become a regional entity, tied together first by the railroad and then by an interstate highway. More important, it had become an urban region, the urban center of a historically rural state. The urban corridor extending westward from the Triangle corresponds to similar types of urbanization in the South: the area on the east coast of Florida from Miami north to West Palm Beach; the region along the Gulf of Mexico from Pensacola to New Orleans; and the area from Richmond east to the Virginia coast. The British call these districts "conurbations," relatively formless masses that ooze out into the countryside from various urban places and eventually grow together. They are much more extensive than census definitions of urban regions, and they are likely to look like ungainly stringbeans on a map. However, their residents share a lifestyle, a culture, and a commonality of interests that transcend traditional political boundaries.

Geographic compactness and regularity have much less political and social meaning than they once did. In the

nineteenth century, county seats were plotted to be no more than one day's ride from anywhere in the county. Inconsistent or nonexistent transportation and the dispersed pattern of settlement severely restricted the mobility of most North Carolinians. Their neighborhood was their world, and occasionally they left its familiar confines to venture to the county seat. Only rarely would they move beyond, except to leave for good.

A century later, advances in transportation, and urban and economic development have cracked the political geometry of the South. Regularity no longer reflects experience and perception. And regularity may not find favor in the courts as occurred in *Connor v. Johnson*, where the state of Mississippi drew five geographically symmetrical Congressional districts horizontally across the state, breaking up an irregularly-shaped historical region, the Mississippi Delta, and not coincidentally the power of its black majority. Regions of common interest have emerged cutting across traditional political boundaries, drawn together by common economic, social, and historical experiences, and connected by common transportation and communication networks.

The Piedmont Crescent in North Carolina is such a region. It has historical integrity; it is the most urban and economically the most developed region of the state. It is also the most diverse region of the state. Before the 1970s, North Carolina was a net exporter of people. The best and brightest of young North Carolinians often went North to pursue their careers because of constricted opportunities at home. This was especially true of black North Carolinians for whom discrimination and limited educational opportunities had closed out upward mobility. The situation changed after 1970. The accommodations won through civil rights legislation, and expanding educational and employment opportunities drew people into the Piedmont from around the country and the world. For the first time since before the Civil War,

North Carolina experienced a net in-migration of both blacks and whites in the 1970s, many of them taking up jobs in the booming Piedmont Crescent. The newcomers enriched the economy and culture of the Crescent's urban regions.

In contrast, what has occurred "down East," if anything, is de-urbanization. Plants and Wal-Marts usually locate out on the by-pass. The towns of eastern North Carolina are no longer the central places they once were: the place to go on a Saturday night, the place to shop, and the place to work. Few people have migrated to these regions except to rejoin families in old age or retire at a resort area along the coast. This is a stagnant, if not declining region, deficient in many of the basic cultural, health, and educational facilities that characterize even the smaller places of the Piedmont Crescent corridor. The energy of newcomers, of innovation and invention, continues to ignore eastern North Carolina.

These have become two very different regions. The issues that concern Piedmont Crescent citizens, such as traffic, density, and zoning, are much less relevant for the residents "down East." Both black and white residents of the respective sections have different needs, interests, and aspirations. Black and white Piedmont residents have more in common with each other than with their counterparts in the east. And the trends of the post-industrial economy will continue to favor the Piedmont Crescent into the next century.

Revised 1/3/94

Defendant's Exhibit 404

**Racial Differences in Candidate Preferences
in North Carolina Elections**

by Richard L. Engstrom, Ph.D.
Research Professor of Political Science
University of New Orleans

Elections in North Carolina in which voters have been presented with a choice between or among African American and white candidates reveal a persistent pattern of racially polarized voting across the state. This report contains the results of analyses of recent elections to the United States House of Representatives in North Carolina, as well as recent statewide and state legislative elections in the state. These analyses show consistent differences in the candidate preferences of North Carolina voters, with African American voters preferring the African American candidates while the non-African American, primarily white, voters have preferred their white opponents.

An analysis has also been performed on elections in which the voters in Robeson County, the area of the state with the highest concentration of Native American residents, have been presented with a choice between or among Native American, African American, and/or white candidates. Voting across that county in elections to countywide and statewide offices has also been divided along group lines. Native American voters have had a preference for Native American candidates, African American voters for African American candidates, and the other, primarily white, voters have preferred white candidates.

Elections to the United States House of Representatives

All of the Democratic primary and runoff primary elections for seats in the United States House of Repre-

sentatives since 1980 in which North Carolina voters have been presented with a biracial choice of candidates have been analyzed, as well as the general and special elections presenting such a choice during that time period. This includes a total of eight elections, four primary and two runoff primary elections, one general election, and one special election to fill an unexpired term.

Methodology

These U.S. House elections have been subjected to both bivariate ecological regression analyses and homogeneous precinct analyses, the same methodologies employed in the *Thornburg v. Gingles* litigation, 478 U.S. 30, 52-53 (1986). These analyses provide evidence as to whether there is "a consistent relationship between [the] race of the voter and the way in which the voter votes," or more simply, whether "black voters and white voters vote differently," which is the definition of "racially polarized voting" adopted by the United States Supreme Court in the *Thornburg* decision (at 53 n.21). The methods have been applied so as [to] provide a comparison in the level of support for the various candidates among African American voters and non-African American voters because section 2 of the Voting Rights Act concerns the opportunity of the protected class to participate and elect candidates of its choice equal to that of the "other members of the electorate." A description of these analytic techniques is provided in part I of the Appendix attached to this report.

The analyses reveal that voting was racially polarized in all of these congressional elections. The results of the regression analyses of these elections are reported in Table 1A, while the results of the homogeneous precinct analyses are reported in Table 1B. Identified in each of the tables are the particular elections analyzed and the names of the African American candidates in these elections. The columns labelled "% of non-African

American Votes" and "% of African American Votes" contain the estimated percentage, respectively, of non-African Americans and African Americans voting in these elections that voted for the African American candidate. Table 1C provides descriptive information for each election analyzed, including the names of all of the candidates, their race and party affiliations, and the number of votes each received. In addition, where appropriate, the counties or portions of counties included within the district is provided.

Also reported in Table 1A, along with the regression-based estimates of the support provided by each group, are the values of the correlation coefficient measuring the relationships between the percentage of the votes received by the African American candidates in each precinct and the percentage of the registered voters in the precincts who were African Americans. The correlation coefficient can range in value from 1.0 to -1.0. A value of 1.0 indicates that as the African American registration percentage increases across a set of precincts, there is a uniform increase in the share of the votes received by the candidate, while a value of -1.0 indicates a uniform decrease in the share of the votes. A value of 0.0 would indicate no relationship between the vote percentages and the registration percentages across precincts. Virtually all correlation coefficients reported in this and the following tables are statistically significant. Any correlations that are not statistically significant are identified in the tables by an "ns" next to the value reported for that coefficient.

Findings

The most recent biracial congressional election occurred in 1992 in District 1, a newly created African American majority district. Four African American candidates sought the Democratic nomination in the primary election in that district, along with three white candidates. Based on a regression analysis of the votes

cast in all of the precincts in this election, the four African American candidates together received an estimated 89.05 percent of the votes cast by African Americans, but only 5.01 percent of those cast by non-African Americans (Table 1A). The estimates derived from the votes cast in only the homogeneous precincts reveal a similar division in the vote. The African American candidates received 90.31 percent of the votes cast in the African American precincts (all those in which African Americans constituted over 90 percent of the registered voters) but only 10.37 percent of those cast in the non-African American precincts (all those in which African Americans constituted less than 10 percent of the registered voters) (Table 1B).

The most preferred candidate among the African American voters in this primary was Eva Clayton, who received an estimated 51.88 percent of the votes cast by African Americans in the regression analysis, and 53.97 percent in the homogeneous precinct analysis. Her support among the other voters in this primary is estimated to have been only 1.38 percent in the regression analysis, and 6.22 percent in the homogeneous analysis.

Ms. Clayton finished second in the primary and faced a white candidate, Walter B. Jones, Jr. in a runoff election for the Democratic nomination. The vote in this election was split clearly along racial lines as well. In the regression analysis, Ms. Clayton's vote among African Americans increased to an estimated 93.26 percent, while in the homogeneous precinct analysis it increased to 96.26 percent. Despite facing only a single opponent in the runoff, her support among non-African Americans was even lower in this election than in the initial primary. The regression analysis reveals that she received virtually no support among the non-African Americans voting in this election, while the homogeneous precinct estimate for these voters is just 4.23 percent.

Ms. Clayton won the runoff election and therefore was the Democratic nominee in the general election, which was also contested by a white Republican, Ted Tyler, and another African American, C. Barry Williams, the Libertarian Party candidate. Once again, Ms. Clayton was the choice of the African American voters, while her white opponent was the choice of the other voters. In both the regression and homogeneous precinct analyses, Ms. Clayton is again estimated to have received over 90 percent of the votes cast by African Americans (95.22 percent in the regression analysis, and 97.94 percent in the homogeneous). Among the other voters, however, her support is estimated to have been 33.93 percent in the regression analysis and 34.80 percent in the homogeneous. Over 60 percent of the non-African American voters voted for Mr. Tyler. Ms. Clayton led in the overall vote, however, and therefore won the seat in Congress.

Ms. Clayton, Mr. Tyler, and Mr. Williams also competed that same day to fill an unexpired term in the previous District 1. The vote in this special election was also racially divided. The regression estimate of Ms. Clayton's vote among the African Americans participating in this election is 98.46 percent, while the homogenous precinct figure is 97.86 percent. Her support among the other voters is estimated to be 41.15 percent in the regression analysis, and 44.36 percent in the homogenous. A majority of the non-African Americans voting in this special election cast their ballots for Mr. Tyler. Ms. Clayton won the overall vote in this special election as well, and therefore completed the unexpired term prior to assuming the seat for the newly created District 1.

The racial divisions in the votes in these four elections in 1992 were not a unique occurrence. Racial divisions were also present in all four congressional elections during the 1980s in which North Carolina voters had a choice between or among African American and white candidates. Voters in the Democratic primaries in two districts, Districts 2 and 4, were presented with a biracial

choice of candidates in 1984. In District 2, an African American candidate, Kenneth B. Spaulding, sought the Democratic nomination, as did one white candidate, Tim Valentine, Jr.. Spaulding was the choice of the African American voters, while Valentine was the choice of the other voters. The regression estimate of Spaulding's support among African American voters in this primary is 89.70 percent, while the homogeneous estimate is 98.06. His vote among the non-African American voters is estimated, in the regression analysis, to be 14.10 percent, while the homogeneous analysis places it at 22.32. Mr. Spaulding lost the election to Mr. Valentine.

Two African Americans, Howard Lee and John Winters, Jr., sought the Democratic nomination in the primary in District 4 that year. They had one white opponent, Ike Andrews. Lee and Winters together are estimated through regression to have received 82.43 percent of the votes cast by African Americans in this primary, with Mr. Lee being their most preferred choice, with 68.57 percent of their votes. The corresponding estimates from homogeneous precincts are 88.66 percent for the two African American candidates combined, with 71.88 percent for Lee alone. The vote for Lee among the non-African Americans voting in this primary is estimated to be 24.32 percent in the regression analysis, and 28.75 in the homogeneous analysis. The non-African American vote for Winters was estimated to be 9.17 percent and 9.95 percent by these respective methods. The candidate of choice and of the non-African American voters, Mr. Andrews, won this election.

In 1982 District 2 was contested by another African American candidate, H. M. (Mickey) Michaux. His opponents were two white candidates, James Ramsey and Tim Valentine. Mr. Michaux is estimated through regression to have received 88.55 percent of the votes cast by African Americans in this election, while the homogenous precinct analysis reveals that he received 97.64 percent of the votes cast by these voters. His

support among the other voters was estimated to be 13.88 percent in the regression analysis, and 18.91 percent in the homogeneous analysis. Mr. Michaux finished first in this initial primary, and faced Mr. Valentine in a runoff election for the nomination. The runoff vote was also divided along racial lines, with Michaux estimated to have received 91.48 percent of the African American vote in the regression analysis, and 98.87 percent in the homogeneous. His vote among the non-African Americans was very similar to that which he received in the initial primary. The regression-based estimate of his non-African American vote is 13.12 percent, while the homogeneous precinct estimate is 17.42. Although first in the initial primary, Mr. Michaux lost the runoff election.

The regression and homogeneous precincts analyses of these eight congressional elections clearly demonstrate that when North Carolina voters have been presented with a choice between or among African American and white candidates for Congress, the African American voters have consistently preferred the African American candidates, and the other voters have consistently preferred the white candidates. These congressional elections in North Carolina have been marked by a persistent pattern of racially polarized voting. [footnote omitted]

Statewide Elections

A pattern of polarized voting is also evident in recent elections in which the voters across the state have been presented with the same biracial field of candidates. As a supplement to the analyses of congressional elections, the candidate choices of African American and other voters have been analyzed in all such statewide elections held since 1988. These elections have involved the high profile offices of President of the United States and United States Senator, and the low profile offices of state Auditor and judge on the Court of Appeals. The

specific elections to high profile offices were the Democratic primary, runoff, and general election for United States Senator in 1990, and the state's Democratic presidential preference primary in 1988. The elections to low profile offices were the 1992 Democratic primary and general election for state Auditor, and the 1990 general election for a judgeship on the state Court of Appeals.

The results of the regression analyses of these seven statewide elections are reported in Table 2A, while the results of the homogeneous precinct analyses are reported in Table 2B. Descriptive information on these elections is provided in Table 2C. As was the case with the elections to the U.S. House of Representatives, each of these statewide contests has been marked by racially polarized voting. African Americans and other voters differed in their candidate preferences in all seven of these contests.

The most recent of these elections involving a high profile office were the U.S. Senate contests in 1990. Two African Americans, Harvey B. Gantt and Robert L. Hannon, sought the Democratic nomination for that position, as did four white candidates. The African American voters in this primary are estimated through regression to have given Mr. Gantt 70.67 percent of their votes. The corresponding figure derived from the homogeneous precincts is 91.24. This preference for Mr. Gantt was not shared by the other voters, however, who are estimated through regression to have cast 22.61 percent of their votes for him, and through homogenous [sic] precincts, 28.15 percent. (Mr. Hannon is estimated, by both methods, to have received less than 2.0 percent of the votes from either group.) Gantt placed first in this initial primary, receiving 37.52 percent of the votes overall.

Gantt's runoff opponent was white candidate Mike Easley. Once again, Gantt was the choice of the African American voters, but not the other voters. In the regres-

sion analysis of this runoff election, Gantt's vote among the African Americans casting ballots increased to 86.29 percent, while in the homogeneous precincts, it increased to 98.38 percent. Among the non-African Americans, however, Gantt received an estimated 38.25 percent of the votes in the regression analysis, and 45.97 percent in the homogeneous precincts. Overall he received 56.89 percent of the vote and won the right to be the Democratic Party's nominee in the general election against white Republican Jesse A. Helms.

The African American support for Gantt in the general election was, according to both estimation procedures, around 98 percent (98.14 percent in the regression analysis, and 98.07 percent in the homogeneous analysis). Gantt's level of support among the non-African American voters, however, was insufficient for him to be elected. In the regression analysis, he is estimated to have received 36.73 percent of the non-African American vote, and in the homogeneous analysis, 39.46. [footnote omitted] (An exit poll conducted by Voter Research and Surveys provided similar estimates of the racial division in the vote in this senatorial election. In this poll of 1,267 voters that day, 96.20 percent of the African American respondents voted for Gantt, compared to 34.13 percent of the non-African American respondents.) [footnote omitted] Gantt was left with only 47.45 percent of the overall vote, and the senate seat was won by Mr. Helms.

The other biracial contest for a high profile office was the 1988 Democratic presidential primary. An African American, Jesse Jackson, was a candidate in this election along with six white candidates. The regression-based estimate of the Rev. Jackson's vote among the African American voters in this statewide primary is 89.32 percent, while the corresponding estimate based on the homogeneous precincts is 95.65. Rev. Jackson was not the choice of the other voters, however. His vote

among non-African Americans is estimated to have been 5.89 percent in the regression analysis, and 12.49 percent in the homogeneous analysis. Jackson finished a close second to white candidate Al Gore overall, with 32.97 percent of the votes.

In contrast to elections for these high profile offices, voters in elections to low profile statewide offices usually have less information about candidates. Voting in these elections therefore is more likely to be influenced by the party affiliations of the candidates. This is especially true in states like North Carolina, where the ballot provides the voters with the option of casting a straight party vote.

The most recent of the biracial elections to a low profile office in North Carolina was the contest for state Auditor in 1992. An African American candidate, Ralph Campbell, sought the Democratic nomination for that office, along with two white candidates. In the primary election, Mr. Campbell is estimated to have received 65.01 percent of the votes cast by African Americans in the regression analysis, and 77.29 percent in the homogeneous precincts. He was not the choice of the other voters, however. His vote among the non-African Americans is estimated to have been 31.14 percent in the regression analysis and 34.42 in the homogeneous analysis. Mr. Campbell received 41.54 percent of the overall vote, which was sufficient to win the party's nomination under North Carolina's 40 percent requirement.

In the general election, Mr. Campbell faced white Republican J. Vernon Abernethy. The voters responded in a racially divided manner in this election as well. While the regression analysis estimates that Mr. Campbell received virtually all of the African American votes cast in this election, and the homogeneous analysis places his vote among African Americans at 97.47 percent, he again was not the choice of the other voters. The regression-based estimate of Campbell's vote among

the non-African American voters is 43.16 percent, while the estimate based on homogeneous precincts is 44.05 percent. Despite losing the vote among the non-African Americans, Mr. Campbell received 53.22 percent of the overall vote and was elected Auditor.

A second biracial election was on the statewide ballot along with the U.S. Senate contest in the 1990 general election. African American Democrat, Clifton E. Johnston, competed with a white Republican, Carter T. Lambeth, for a seat on the state Court of Appeals. Mr. Johnston is estimated to have received almost all of the votes cast by African Americans (virtually 100 percent in the regression analysis and 98.24 in the homogeneous analysis), but as was the case with Gantt, Jackson, and Campbell, he also was not the choice of the other voters. The regression-based estimate of Johnson's vote among the non-African Americans is 43.08 percent, while the homogeneous precinct estimate is 44.22 percent. Mr. Johnson received 54.26 percent of the votes overall, however, and won the judgeship.

As was the case with elections to the U.S. House, voting in recent statewide elections involving a biracial choice of candidates, regardless of whether they have been for high profile or low profile offices, has been marked by racially polarized voting. While these racial divisions have not precluded African American candidates from winning low profile statewide offices, these racial divisions have resulted in the defeat of African American candidates in the elections to high profile offices.

State Legislative Elections

In addition to the congressional and statewide elections, state legislative elections in which voters have been presented with a biracial choice of candidates since 1988 have been analyzed. A total of 20 such elections in single-member legislative districts and 15 in multi-

member districts have been examined. These are all of the state legislative elections in 1988, 1990, and 1992 involving a biracial choice of candidates for which sufficient data were available for analysis. [footnote omitted] These elections have also been marked by a persistent pattern of racially polarized voting. [footnote omitted]

Single-Member Districts

The results of the regression analyses of the legislative elections in single-member districts are reported in Table 3A, while the results of the homogeneous precincts analyses are reported in Table 3B. Descriptive information on the elections is provided in Table 3C. The regression results reveal that in all 20 of these elections the African American candidates were the preferred candidates of the African American voters. In none of these elections, however, was that choice of an African American shared by the non-African American voters. For example, in House District 1, in the latest Democratic primary, 1992, African American candidate Charles L. Foster is estimated in the regression analysis to have received 92.83 percent of the votes cast by African Americans, compared to 26.54 percent of those cast by the other voters. Mr. Foster's only opponent, white candidate Vernon G. James, was the choice of the other, non-African American voters.

Estimates from homogeneous precincts, where available, confirm these racial divisions in the vote. For example, in the Democratic primary in House District 1 in 1992, the estimate of Mr. Foster's vote among African Americans is 96.67 percent, while his vote among the non-African Americans is placed at 33.36 percent. The only homogeneous precinct estimate that does not confirm the racial division in the choice of candidates revealed in the regression analyses is that for the 1992 general election in Senate District 41. The homogeneous estimate of the vote among the non-African Americans for the African American candidate in that election, C.R.

Edwards, is 54.22 percent, whereas the regression estimate is 44.53 percent. This homogeneous estimate of Mr. Edwards' non-African American support, however, is based on a single precinct.

Multi-Member Districts

Analyses of the elections in the multi-member districts have had to be adjusted to reflect the fact that voters in these elections were allowed, but not required, to cast as many votes as there were seats apportioned to the particular districts. In this multiple vote context, the percentage of the *total votes* cast by a group of voters for a particular candidate is not the same, as was the case in the above analyses, as the percentage of the group's *voters* that voted for that candidate. A different approach must be taken, therefore, to determine the relative preferences of the voters of the different groups in these multi-seat elections. While this approach will not allow us to estimate the percentage of those voting in the legislative election itself who preferred a particular candidate, it will allow us to determine the relative rankings of the candidates among the voters of each group, and therefore whether the candidates of choice in these elections were the same for each of the groups.

In some of the multi-member districts, records have been kept that report the number of voters who came to the polls on the day legislators were elected. When those figures have been available, an analysis has been performed that estimates the percentage of the African Americans and non-African Americans signing in to vote that day that voted for a particular candidate. These percentages are not based, as noted above, on only those voting in the legislative election, but rather on all of those signing in to vote. This means, for example, that in a Democratic primary election, the denominator on which the percentage is based would include not only those voting in the legislative contest, but also those people who signed to vote but could not vote in that

primary because they were not registered as Democrats. This procedure does not allow us to determine, however, which of the candidates would have been elected by the African American voters and which by the non-African American voters. Ten of the elections have been analyzed in this manner.

When election day sign-in records have not been available for all of the precincts in a district, a different measure of turnout on election day has been employed. This is, for each precinct, the number of votes cast in the simultaneous single vote election that day that drew the largest number of votes across the county in which the precinct is located. Five elections have been analyzed in this manner. A description of the procedures employed to analyze the multi-vote elections is provided in part II of the Appendix.

The results of the regression analyses of the multi-seat elections for which sign-in data were available are reported in Table 4A, while the results of the homogeneous precinct analyses of these elections are reported in Table 4B. Descriptive information about these elections is provided in Table 4C. The regression results for the elections analyzed using the votes cast in the election contests drawing the most votes are reported in Table 5A, and the corresponding homogeneous results in Table 5B. These tables contain the estimated support for all of the candidates in these elections, not just the African American candidates, in order to reveal which of the candidates would have been elected by the respective groups of voters. Descriptive information about these elections is reported in Table 5C.

The regression results for the ten elections employing sign-in data show an African American candidate to be the candidate that received the most support from African American voters in all ten of these elections. With only a single exception, that same candidate would not have been included among those either nominated in

the Democratic primary election, or elected in the general election, if only the votes of the non-African American voters had been counted. For example, in the 1992 Democratic primary for the two seats in Senate District 13, Ralph A. Hunt, an African American, received a vote from more African American voters than his two white opponents. Hunt is estimated to have received a vote from 94.75 percent of the African Americans signing in to vote that day, whereas his white opponents, Wilbur P. Gulley and John W. Hamby, Jr., are estimated to have received votes from 20.28 percent and 2.18 percent, respectively. Hunt finished last among the three candidates, however, among the non-African American voters. He is estimated to have received a vote from 23.74 percent of the non-African Americans who signed in to vote, compared to 40.24 percent for Gulley and 32.07 percent for Hamby. If only the votes of the non-African Americans had counted, therefore, Hunt would have been eliminated as a result of the primary vote.

Hunt obviously benefitted from single-shot voting by many of his African American supporters. It is estimated through the regression analysis that at least 72.29 percent of the African Americans signing in to vote cast a vote for Hunt but withheld their remaining vote from either of the candidates competing with him. (If it is assumed that none of the 20.28 percent of the African Americans that voted for Gulley was among the 2.18 percent that voted for Hamby, and that all of these African Americans voting for a white candidate also voted for Hunt, then subtracting this 22.46 percent from the 94.75 percent that voted for Hunt results in 72.29 percent of the African Americans voting for Hunt and no other candidate in this legislative election). Hunt's decisive margin among the African American voters propelled him to a first place finish in the primary and therefore a spot in the subsequent general election, along with Mr. Gulley.

In the 1992 general election, Hunt and Gulley faced two white Republicans, Victoria Peterson and Melodie A. Parrish. Hunt again received more votes from the African American voters signing in to vote that day than any of the other candidates. He is estimated to have received a vote from 95.12 percent of them. He was again the last place candidate among the non-African American voters, however, receiving a vote from an estimated 33.67 percent of these voters. The two candidates receiving the most votes from the non-African American voters were the Republicans, Parrish and Peterson. Ms. Parrish is estimated to have received a vote from 45.69 percent of the non-African Americans, and Ms. Peterson from 42.22 percent. Gulley received a vote from 39.16 percent of them. If only the votes of the non-African Americans had been counted, Hunt would have been defeated in the general election. His margin among the African Americans, however, was decisive, as he finished second to Mr. Gulley and won one of the district's two seats.

The only instance, across these ten elections, of an African American candidate being included among the candidates who would have been elected by non-African American voters occurred in the general election in three-member House District 23 in 1992. Three Democratic candidates faced two candidates from the Libertarian Party in that election. Mickey Michaux, an African American Democrat, finished third in the non-African American vote in that contest, ahead of the two candidates of the minor party. This is the only exception to the pattern of racial differences in the candidate choices of the voters in these ten multi-seat, multi-vote elections. The estimates based on the votes cast in homogeneous precincts, in districts where such precincts exist (see Table 8), support the same conclusions about the voters' preferences in these elections as do the regression results.

The analyses of the five multi-seat elections employing the number of votes cast in the simultaneous single vote election contest provide evidence of the same pattern of candidate preferences. The results, reported in Table 5A, show once again that the candidate receiving the most votes from African American voters was always an African American, and that same candidate would have been defeated, either in the primary or general election, if only the votes of the non-African American voters had been counted. The results of homogeneous precinct analyses, when available (see Table 5B), are again consistent with the regression results.

The analyses of biracial elections to state legislative seats has revealed a consistent pattern of racially polarized voting, as have the analyses of the biracial congressional and statewide elections. Racial divisions in candidate preferences, it must be concluded, are a persistent phenomenon across elections in North Carolina.

Robeson County Elections

An analysis has also been conducted of elections in Robeson County, the county in North Carolina with the highest concentration of Native American residents (38.52 percent, according to the 1990 Census). Elections to countywide offices from 1982 through 1992 in which voters have had a choice between or among Native American, African American, and/or white candidates have been analyzed in order to assess the extent to which Native American voters share the same candidate preferences as African Americans and voters who are neither Native nor African American (a primarily white group hereinafter referred to as "other" voters). In addition, voting within Robeson County has been examined in the seven statewide elections involving African American and white candidates that were analyzed above to determine the candidate preferences of the Native American voters in these elections.

In order to estimate the level of support for the various candidates among the Native American voters as well as the African American and the other voters, a multivariate rather than bivariate regression analysis has been performed on these elections. These multivariate analyses include the percentage of registered voters in the precincts at the time of these elections that was Native American, as well as the percentage that was African American. A description of this multivariate procedure is provided in part III of the Appendix to this report.

Table 6A contains the regression-based estimates of the support for Native American and African American candidates in the elections to countywide offices. Partial correlation coefficients, which measure the relationship between the vote within the precincts and either the African American registration within the precincts or the Native American registration, are reported along with the regression-based estimates of each group's support for the respective candidates. The homogeneous precinct results for these elections are reported in Table 6B. Homogeneous Native American precincts are those in which Native Americans constitute over 90 percent of the registered voters at the time of the election. Descriptive information about these elections is contained in Table 6C. Tables 7A and 7B contain the results of the regression and homogeneous precinct analyses of the votes for the African American candidates in statewide elections within Robeson County.

Nine elections to countywide offices have been analyzed. Four of these presented voters with a choice between or among Native American and white candidates. Three involved a choice between or among African American and white candidates. One of the remaining elections involved a choice among candidates of all three racial groups, while the other involved a choice between a Native American and an African American.

Native American voters supported the Native American candidates in all of these elections. In the two elections involving a choice between a Native American and an African American candidate, the candidate preferences of Native American and African American voters were divided. In the Democratic primary in 1990 for Coroner, the regression-based estimate of the support for the Native American candidate, Billy Olendine, among Native American voters is 85.07 percent, while the estimate based on homogeneous precincts is 83.28 percent. African Americans, in contrast, preferred the African American candidate in this election, Shulten Maultsby. The regression-based estimate of their support for Maultsby is 93.08 percent, while the homogeneous precinct estimate is 87.24 percent. The remaining voters in this election preferred the white candidate, B. Leroy Freeman. The regression estimate of their support for Freeman is 85.79 percent, while the homogeneous estimate is 85.52 percent.

The 1988 Democratic primary for District Court Judge was the other election involving both an African American and a Native American candidate. Native American voters are estimated, through regression analysis, to have cast virtually all of their votes for the Native American candidate in this election, Bobby L. Locklear, who received 98.22 percent of the votes cast in the Native American homogeneous precincts. African American voters supported Locklear's African American opponent, Maceo C. Kemp. The regression-based estimate of their vote for Kemp was 64.19 percent, the homogeneous precinct estimate, 63.71. The remaining voters favored Locklear over Kemp. The regression estimate of their vote for Locklear is 41.96 percent, the homogeneous estimate, 36.13.

The Native American preference for Native American candidates was evident in the four elections in which the choice was between Native American and white

candidates as well. In the 1990 general election for Coroner, Native Americans supported the Republican candidate, Native American Lindberg Locklear, over Freeman, the winner of the Democratic primary. In the regression analysis, an estimated 66.10 percent of the Native American vote went to Locklear, while in the homogeneous precinct analysis, it is estimated to have been 68.09. In comparison, Locklear is estimated to have received virtually no votes from African Americans in the regression analysis, and only 9.64 percent of the votes based on the African American homogeneous precincts. The remaining voters preferred Freeman as well. Locklear received an estimated 16.64 percent of their votes, based on regression, and 17.63 based on homogeneous precincts.

The other three elections involving Native American and white candidates reveal the same voting pattern. In the 1990 Democratic primary for Sheriff, and in the 1984 Democratic primary and runoff elections for District Court Judge, Native American voters preferred the Native American candidates while African American voters, as well as the other voters, preferred their white opponents.

The three elections involving a choice between African American and white candidates to countywide offices reveal once again the preference of African American voters for African American candidates. In all three of these elections, the Democratic primaries for Register of Deeds in 1992, Clerk of Court in 1990, and Coroner in 1986, African American voters preferred the African American candidate. This preference was not shared by voters who were neither African American nor Native American in any of these elections. Native Americans split their votes closely between the African American and white candidates in two of these elections, and voted decisively for the white candidate in the third. In the two-candidate 1992 Democratic primary for Register

of Deeds, the Native American vote for the African American candidate, Thomas Jones, is estimated to have been 49.10 percent in the regression analysis, and 49.62 percent in the homogeneous analysis. In the two-candidate primary for Clerk of Court in 1990, the Native American vote for the African American candidate, Larry Graham, is estimated to have been 52.03 percent in the regression analysis, and somewhat higher, 58.78 percent, in the homogeneous analysis. In the remaining election, the two-candidate 1986 primary contest for Coroner, the estimated Native American vote for the African American candidate, Vester Maultsby, is 29.77 percent based on regression, and 33.56 percent based on homogeneous precincts.

These analyses of elections to offices within Robeson County reveal that each respective group of voters has preferred the candidates from within that group. Native Americans in Robeson County, like African Americans and the other, primarily white, voters both within Robeson County and across the state, prefer candidates from within their own group. When presented with a choice between African American and white candidates, the Native American voters in Robeson County have not been as supportive of the African American candidates as have the African American voters, but have been more supportive of these candidates than the other, remaining voters.

This pattern of support for African American candidates varying by group is replicated in the analyses of the seven statewide elections involving African American and white candidates. The analyses of the Robeson County vote in these elections, which do not involve local candidates, reveal that the level of support for the African American candidates by Native Americans, while varying greatly across elections, is consistently less than that of the African American voters but more than that of the other voters (see Tables 7A and 7B). Native

American support for African American candidates therefore has fallen between that of the African American voters and the other, primarily white, voters in all 16 of the Robeson County elections analyzed.

Conclusion

Elections in North Carolina in which voters have been presented with a choice between or among African American and white candidates have been marked by a persistent pattern of racially polarized voting. This has been true of elections to the U.S. House of Representatives, of statewide elections to both high profile and low profile offices, and of state legislative elections, regardless of whether they were in single member or multi-member districts. A total of 50 such elections have been analyzed (excluding those in Robeson County), and in 49 of them, the candidate choices of the voters divided along racial lines. The only exception to this pattern was one general election, in a three-seat legislative district, in which the options were limited to three Democratic candidates and two minor party (Libertarian) candidates.

Elections in Robeson County have also been marked by polarized voting. Native American voters in Robeson have had a preference for Native American candidates, African American voters for African American candidates, and the other, primarily white voters, have preferred white candidates. When presented with a choice between Native American and white candidates, the African American voters in Robeson County have consistently preferred the white candidates. Native American voters, when presented with a choice between African American and white candidates, have been less supportive of the African American candidates than the African American voters, but more supportive than the other, primarily, white voters.

Race is obviously a fundamental division in North Carolina politics. Racially polarized voting occurs across

the state, and across types of elections. The polarized voting found in *Thornburg v. Gingles* is not a phenomenon of the past; it remains prevalent in the state today. Racial divisions, unfortunately, continue to be a central feature of elections in North Carolina.

Defendants' Exhibit 406

**NORTH CAROLINA MUNICIPALITIES WITH POPULATION
OVER 2,300 RANKED BY SIZE, 1990**

RANK	MUNICIPALITY	COUNTY(IES)	JULY 1990 ESTIMATE
1	CHARLOTTE	MECKLENBURG	397,976
2	RALEIGH	WAKE	209,971
3	GREENSBORO	GUILFORD	184,278
4	WINSTON-SALEM	FORSYTH	143,841
5	DURHAM	DURHAM	137,195
		ORANGE	
6	JACKSONVILLE	ONSLOW	78,092
7	FAYETTEVILLE	CUMBERLAND	75,928
8	HIGH POINT	FORSYTH	69,670
		GUILFORD	
		DAVIDSON	
		RANDOLPH	
9	ASHEVILLE	BUNCUMBE	61,711
10	WILMINGTON	NEW HANOVER	55,712
11	GASTONIA	GASTON	54,831
12	ROCKY MOUNT	EDGECOMBE	49,101
		NASH	
13	GREENVILLE	PITT	45,239
14	CARY	WAKE	44,373
15	GOLDSBORO	WAYNE	41,868
16	BURLINGTON	ALAMANCE	39,582
17	CHAPEL HILL	DURHAM	38,872
		ORANGE	
18	WILSON	WILSON	36,979
19	KANNAPOLIS	CABARRUS	31,403
		ROWAN	
20	HICKORY	BURKE	28,377
		CATAWBA	
21	CONCORD	CABARRUS	28,266
22	KINSTON	LENOIR	25,274

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RANK	MUNICIPALITY	COUNTY(IES)	JULY 1990 ESTIMATE
23	SALISBURY	ROWAN	23,143
24	STATESVILLE	IREDELL	20,594
25	HAVELOCK	CRAVEN	20,202
26	LUMBERTON	ROBESON	18,629
27	NEW BERN	CRAVEN	17,427
28	MONROE	UNION	16,631
29	LEXINGTON	DAVIDSON	16,625
30	ASHEBORO	RANDOLPH	16,460
31	THOMASVILLE	DAVIDSON	15,954
32	ROANOKE RAPIDS	HALIFAX	15,721
33	HENDERSON	VANCE	15,624
34	EDEN	ROCKINGHAM	15,250
35	GARNER	WAKE	15,078
36	MORGANTON	BURKE	15,067
37	ALBEMARLE	STANLY	14,965
38	SHELBY	CLEVELAND	14,678
39	SANFORD	LEE	14,590
40	ELIZABETH CITY	CAMDEN	14,423
		PASQUOTANK	
41	LENOIR	CALDWELL	14,218
42	REIDSVILLE	ROCKINGHAM	14,011
43	MATTHEWS	MECKLENBURG	13,716
44	BOONE	WATAUGA	12,948
45	KERNERSVILLE	FORSYTH	11,686
		GUILFORD	
46	LAURINBURG	SCOTLAND	11,655
47	MINT HILL	MECKLENBURG	11,628
48	CARRBORO	ORANGE	11,611
49	TARBORO	EGDECOMBE	11,042
50	GRAHAM	ALAMANCE	10,389
51	MOORESVILLE	IREDELL	9,418
52	ROCKINGHAM	RICHMOND	9,392
53	NEWTON	CATAWBA	9,330

JA-600

RANK	MUNICIPALITY	COUNTY(IES)	JULY 1990 ESTIMATE
54	WASHINGTON	BEAUFORT	9,170
55	SOUTHERN PINES	MOORE	9,162
56	KINGS MOUNTAIN	CLEVELAND	8,767
		GASTON	
57	BELMONT	GASTON	8,448
58	DUNN	HARNETT	8,366
59	HOPE MILLS	CUMBERLAND	8,299
60	CLINTON	SAMPSON	8,197
61	OXFORD	GRANVILLE	8,042
62	MOUNT HOLLY	GASTON	7,848
63	SPRING LAKE	CUMBERLAND	7,580
64	SMITHFIELD	JOHNSTON	7,557
65	FOREST CITY	RUTHERFORD	7,486
66	ROXBORO	PERSON	7,338
67	HENDERSONVILLE	HENDERSON	7,305
68	MOUNT AIRY	SURRY	7,162
69	ARCHDALE	GUILFORD	6,938
		RANDOLPH	
70	LINCOLNTON	LINCOLN	6,873
71	WAYNESVILLE	HAYWOOD	6,762
72	BLACK MOUNTAIN	BUNCOMBE	6,298
73	LEWISVILLE	FORSYTH	6,213
74	HAMLET	RICHMOND	6,191
75	MOREHEAD CITY	CARTERET	6,077
76	CLEMMONS	FORSYTH	6,032
77	WAKE FOREST	WAKE	5,811
78	WILLIAMSTON	MARTIN	5,499
79	CONOVER	CATAWBA	5,481
80	BREVARD	TRANSYLVANIA	5,398
81	EDENTON	CHOWAN	5,277
82	PINEHURST	MOORE	5,121
83	WHITEVILLE	COLUMBUS	5,076
84	APEX	WAKE	5,025
85	SILER CITY	CHATHAM	4,824

Defendants' Exhibit 440

**MINIMUM PERCENTAGE OF WHITE AND BLACK
RESIDENTS THAT LIVE IN URBAN AREAS
CONGRESSIONAL DISTRICT 12, 1992 PLAN,
NORTH CAROLINA***

TOTAL WHITE POPULATION . . . 230,889

TOTAL RURAL POPULATION . . . 75,295

ASSUME ALL RURAL POPULATION IS WHITE.

MINIMUM WHITE URBAN POPULATION . . .

$$230,889 - 75,295 = 155,594$$

MINIMUM WHITE URBAN PERCENTAGE . . .

$$155,594/230,889 = 67.4\%$$

TOTAL BLACK POPULATION . . . 312,791

TOTAL RURAL POPULATION . . . 75,295

ASSUME ALL RURAL POPULATION IS BLACK.

MINIMUM BLACK URBAN POPULATION . . .

$$312,791 - 75,295 = 237,496$$

MINIMUM BLACK URBAN PERCENTAGE . . .

$$237,496/312,791 = 75.9\%$$

*1990 CENSUS OF POPULATION AND HOUSING, CHARACTERISTICS FOR CONGRESSIONAL DISTRICTS OF THE 103RD CONGRESS, NORTH CAROLINA TABLES 1 AND 13.

Defendant-Intervenors' Exhibit 501

**"AFTER 120 YEARS:
REDISTRICTING AND RACIAL DISCRIMINATION
IN NORTH CAROLINA"**

A Report Prepared for *Shaw v. Hunt*
by J. Morgan Kousser
March 22, 1994

* * * *

**IV. HOW WELL DO WHITES REPRESENT BLACKS IN
NORTH CAROLINA?**

A. CONGRESSIONAL ROLL CALL BEHAVIOR

29. Although there may be some symbolic value to choosing a person of a particular gender, ethnic group, or occupation, and although elected officials put much of their time and effort into particularized constituency services, the principal purpose of electing a representative is to insure that one's views are represented. If there were no systematic relationship between race and policy stances within the electorate or among elected officials, then the racial composition of electoral districts would be of little practical importance and of no legal interest. If blacks and whites in an electorate took the same positions on policy issues, or if the voting patterns of black and white members of Congress were indistinguishable, or if members of Congress from districts with very different proportions of people of each race in the electorate voted similarly, then it would not matter, for racial concerns at least, where the district lines were drawn. What has been the case in North Carolina? Have white and black members of Congress voted in the same way? Have whites reflected black interests so well that blacks do not need black faces to represent them, as Carol Swain has suggested is sometimes true in the nation as a whole? [footnote omitted] Is the black electorate, as such conservative pundits as Clint Bolick

suggest, much less liberal than the black elite, in which case differences between the voting records of black and white members of Congress would prove that black interests would be better represented by white faces? [footnote omitted]

30. The most easily accessible and comprehensive index of ideological patterns of behavior in congressional roll calls is *Congressional Quarterly's* "Conservative Coalition Scores," which are based on 60-100 roll calls per session on a wide range of subjects and are published annually. The scale varies from 0 to 100, with 100 being the most conservative, as *CQ* determines it. [footnote omitted] Figure 1, which summarizes 23 years of data succinctly, demonstrates that black and white members of Congress from North Carolina do *not* vote similarly.

31. The members of Congress from the state have been grouped into three categories and the scores for each category have been averaged: [footnote omitted] Republicans, Democrats from the two most heavily black districts (the First and Second until 1993, then the First and Twelfth), and Democrats from other districts. The pattern is striking. Republicans consistently score about 90% conservative. Other Democrats average around 70%, but vary from the low 60s to the low 80s in particular years. The two white Democrats from districts One and Two act like Republicans until 1980, and then somewhat more like other Democrats. The huge anomaly in the figure comes when two black Democrats, Eva Clayton and Mel Watt, replace whites in the two "black districts" after the 1992 election. Suddenly, a conservative index that had been nearly 90% in 1991 and 60% in 1992 becomes 11%. In North Carolina, the color of the member of Congress seems to make a major difference in roll call voting.

32. But was this just an effect of a new Democratic administration and two first-term members of Congress? Figure 2 suggests a negative answer to the question. It

juxtaposes the data for the North Carolina "black districts" from Figure 1 with scores for all African Americans elected to Congress from the eleven ex-Confederate states for every session since 1970 in which any were elected from that group. The fact that the 1993 figure for the North Carolinians is very similar to that for other southern black members of Congress implies that if districts in which African Americans had an opportunity to elect candidates of their choice had been drawn earlier in North Carolina, those people elected would have voted very differently from other representatives from North Carolina. On this evidence, then, the opinions of North Carolina blacks were not truly represented in Congress before the redistricting of 1992. To repeal that redistricting is to exclude those voices.

* * * *

36. A 1993 survey on racial attitudes in North Carolina sponsored by the Z. Smith Reynolds Foundation, Inc. of Winston-Salem suggests that citizens of the state mirror national trends. In Table 1, I have excerpted a few of the answers to the large number of questions asked of the respondents, divided them into four categories, and listed the percentages of each race holding the indicated attitudes. Panel A shows that whites and blacks differ in their beliefs about the extent of prejudice and racial discrimination in North Carolina today. One in five blacks, but only one in twenty whites considers race relations or discrimination one of the most important problems facing the state. More than twice as many blacks as whites considers racial discrimination in the state very serious and increasing. Nearly twice as high a percentage of blacks as whites agree very strongly that most whites in the state are prejudiced, and nearly three times as many think most whites "want to keep blacks down."

37. Panels B and C demonstrate even wider racial differences concerning the degree of private and public

discrimination in contemporary North Carolina. African-Americans are three to four times as likely as whites to believe that there is anti-black discrimination in jobs, housing, education, public accommodations, scholarships, local government, and law enforcement. Whites are more likely than blacks to perceive anti-*white* discrimination in jobs and scholarships by nearly a seven to one margin, and to think that the federal and state governments have done "too much to help blacks achieve equality" by thirty to one. Five times as high a proportion of blacks than whites consider "equal justice for minorities in North Carolina" a major problem. Panel D shows that members of the two races differ markedly on important governmental policies: banning housing discrimination, affirmative action in college admissions or employment, and busing schoolchildren for integration. In sum, in North Carolina, as in the nation as a whole, whites and blacks see entirely different worlds. In the white view, there is little remaining prejudice or public or private discrimination, and there is consequently little need for government programs to do something about it. In the black view, prejudice and discrimination are pervasive, and governments at all levels should act to remedy this serious plight. It is not a large inferential leap to connect constituents' attitudes revealed in these surveys with the congressional voting patterns portrayed in Figures 1 and 2.

* * * *

**TABLE 1: DIFFERENCES IN RACIAL ATTITUDES
IN NORTH CAROLINA, 1993**

<u>Item</u>	<u>Percent With Attitude</u>	
	<u>White</u>	<u>Black</u>

PANEL A: GENERAL BELIEFS ABOUT PREJUDICE

race relations/discrimination an important problem	5	20
racial discrimination and prejudice today in N.C. very serious	17	37
prejudice and discrimination against blacks in N.C. more prevalent in 1993 than in 1980	17	36
agree very strongly that most whites in N.C. have prejudiced views	38	70
most whites in N.C. want to keep blacks down	13	40

**PANEL B: DEGREE OF PRIVATE
DISCRIMINATION TODAY**

whites have better chance in N.C. to get any job qualified for	19	70
any housing can afford good education	13	54
	9	38
blacks often treated more slowly or less politely in N.C. restaurants or retail stores	8	45
qualified blacks are denied jobs, scholarships	20	74
qualified whites lose out on jobs, scholarships	40	6

**PANEL C: GENERAL BIAS IN
GOVERNMENT PROGRAMS**

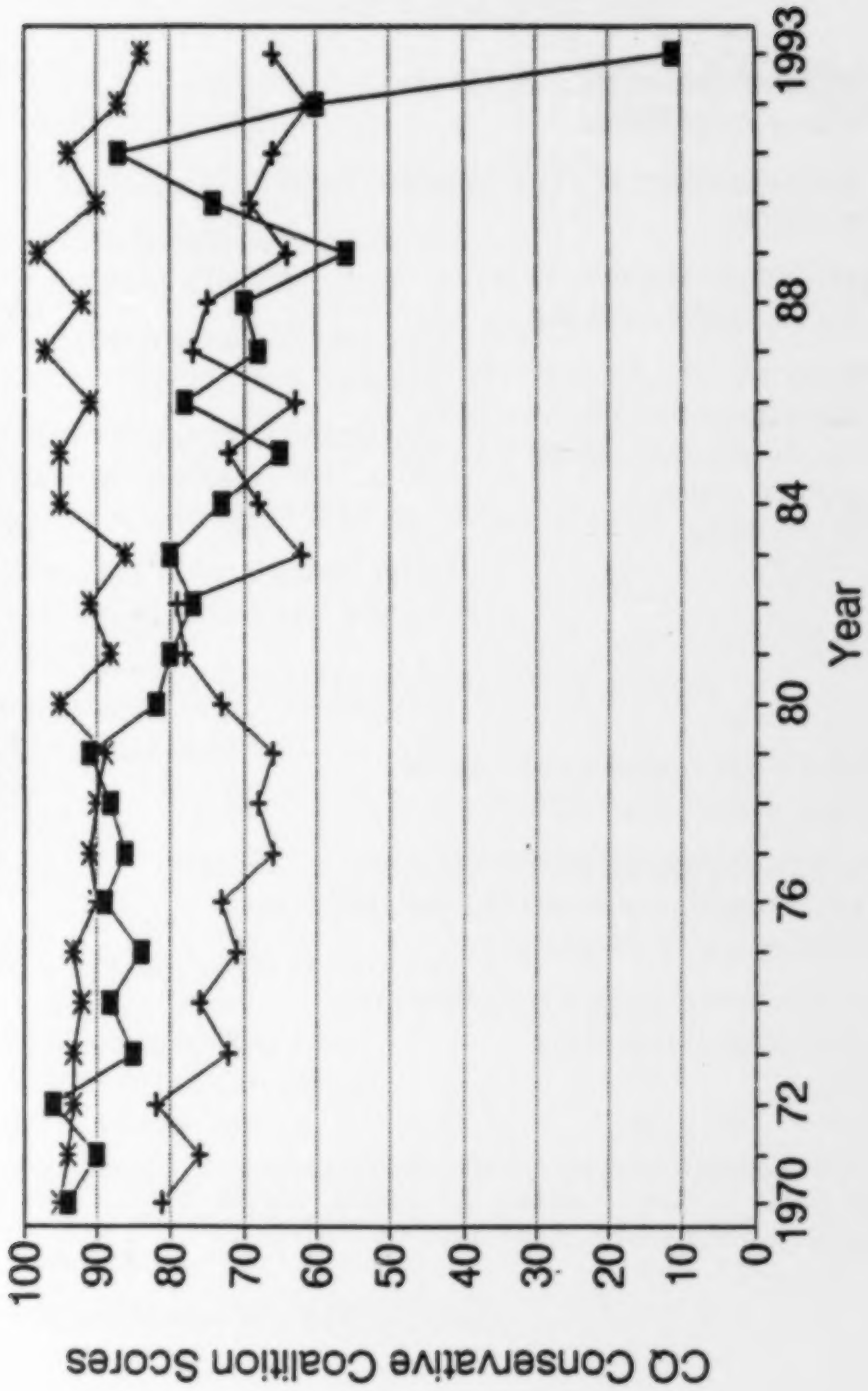
local government in N.C. favors whites over blacks	13	52
law enforcement in N.C. tougher on blacks	19	64
equal justice for minorities in N.C. is major problem	15	65
federal and state governments have done too much to help blacks achieve equality in the past 10 years	30	1
— too little	23	76

PANEL D: POLICY PREFERENCES

prefer local housing ordinances that permit discrimination	44	15
strongly oppose giving blacks preferential treatment in college admissions or employment	52	24
strongly favor busing schoolchildren for racial integration	4	26

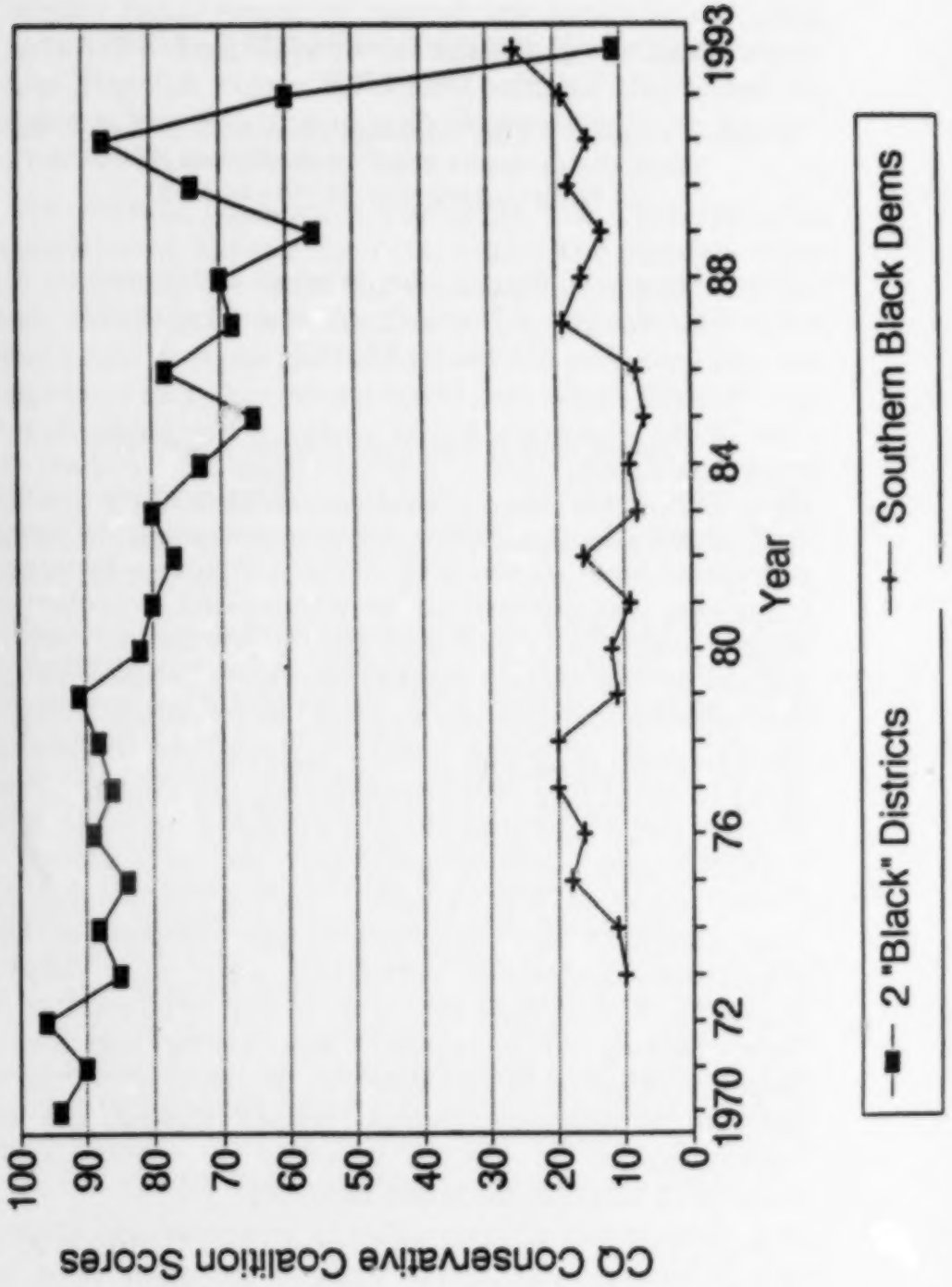
Source: September-October, 1993 telephone sample of 403 whites and 409 blacks in North Carolina by Howard, Merrell and Partners of Raleigh, sponsored by Z. Smith Reynolds Foundation.

Fig. 1: Do White and Black Congressmen
Differ in North Carolina?



—■— 2 "Black" Districts —+— Other Democrats —*— Republicans

Fig.2: N.C. "Black Districts" vs. Other Southern Black Members of Congress



Defendant-Intervenors' Exhibit 501 (cont'd)

**"RACE AND POLITICS IN NORTH CAROLINA,
1865-1994"**

[A Report Prepared for the Defendant-Intervenors in Shaw v. Hunt
United States District Court for the Eastern District
of North Carolina, No: 92-202-CIV-5-BR]

Harry L. Watson, Department of History
University of North Carolina at Chapel Hill
March 23, 1994

* * * *

Fusion and White Supremacy, 1894-1901

[6] The dynamics of North Carolina politics changed dramatically in the 1890s. Adverse economic conditions persuaded large numbers of white, previously Democratic farmers that political action was needed to protect the state's poverty-stricken agricultural population, yet the leaders of the state's Democratic party refused to give this movement their full support. In response, a significant number of white voters deserted the Democratic party in favor of a new organization, the Populist Party. Though racial resentments still persisted between white Populists and black Republicans, the two groups [7] joined forces in the so-called "fusion" movement and won control of the legislature in the elections of 1894. The fusion dominated legislature then took steps to expand and safeguard the rights of blacks to register and vote, leading to increased black voting and further Republican gains in the election of 1896, including the election of Governor Daniel Lindsay Russell, the only Republican to be elected governor of North Carolina from 1872 to 1972. [footnote omitted]

Black political success had come from divisions in the white electorate along the lines of economic class, and leading white Democrats resolved that this development

should never be allowed again. In 1898, they launched a violently racist campaign against the Republicans, using highly influenced appeals to racial bigotry to persuade white Populist voters to abjure political ties based on economic interests and to vote Democratic in an expression of white racial solidarity.

The "White Supremacy Campaign" of 1898 featured extraordinary appeals to racial fears. The *Raleigh News and Observer*, the leading Democratic newspaper of the state, set the tone with a series of graphic cartoons on its front page. A repeated theme in these cartoons was the suggestion that Governor Russell and other Republicans, though white, were widely [8] influenced by black political leaders. [footnote omitted] Other images suggested that black political success would result in a loss of political patronage or employment for deserving white men. [footnote omitted]

Similar appeals to racial fear were repeated by white Democratic campaign spokesmen in speeches and written addresses to the voters. In a typical example, state Democratic party chairman Fannifold M. Simmons warned against "NEGRO CONGRESSMEN, NEGRO SOLICITORS, NEGRO REVENUE OFFICERS, NEGRO COLLECTORS OF CUSTOMS, NEGROES in charge of white institutions. NEGROES in charge of white schools, NEGROES holding inquests over the white dead" and declared that "North Carolina is a WHITE MAN'S state, and WHITE MEN will rule it, and they will crush the party of Negro domination beneath a majority so overwhelming that no other party will ever again dare to attempt to establish negro rule here." [footnote omitted] These tactics were effective, and Democrats won a sweeping victory in the legislative elections of 1898.

White passions were so influenced by the rhetoric with the 1898 campaign, moreover, that Democratic victory was followed by a coup d'etat and massive bloodletting in Wilmington, the state's largest city. On the day follow-

ing the election, a white male forced the Republican-dominated city council (which had not been [9] up for re-election) to resign and replace itself with Democratic successors. The mob then proceeded to attack black neighborhoods and murder black leaders, resulting in some fifteen to thirty deaths. These crimes were never punished. [footnote omitted]

On taking office in 1899, the Democratic legislators began to enact the program of enforced racial segregation recently endorsed by the *Plessy* decision of the United States Supreme Court (1896), by passing the state's first law requiring separation of the races on railroad trains. They also adopted a plan to strip black citizens of the right to vote, in order to make sure that political division in the white community could never again lead to a resurgence of black power. They adopted and submitted to the voters a constitutional amendment which imposed a literacy test and a poll tax requirement for the right to vote, with a "grandfather clause" to protect the voting rights of illiterate white men. The ensuing ratification campaign in 1900 was replete with familiar graphic images appealing to white fears of black domination. [footnote omitted] The literacy test was forcefully advocated as a subterfuge aimed at disfranchising black citizens in defiance of the Fourteenth and Fifteenth Amendments to the United States Constitution. As Locke Craig, future governor of North Carolina, put to campaign crowds, "It will unite into an irrevocable constitutional decree, that the white men of North [10] Carolina shall make and administer all the laws. This is the purpose and effect of the constitutional amendment." Moreover, claimed Craig, speaking of the literacy test, "this one section will wipe out the negro vote in North Carolina. Of the 120,000 negro voters it will disfranchise 110,000 of them, practically all of them. It will be good bye to all negro office holders, and all those who have their hope of office in the negro vote." [footnote omitted] A blunter message came from former

Congressman Alfred Moore Waddell, leader of the Wilmington "race riot" of 1898. "Go to the polls tomorrow," he said in a pre-election address, "and if you find the negro out voting, tell him to leave the polls and if he refuses, kill him, shoot him down in his tracks. [footnote omitted] Under these circumstances, the disfranchising amendment passed overwhelmingly. George W. White, the last southern black congressman before the passage of the Voting Rights Act, was swept from office and Charles B. Aycock, Democratic candidate for governor, won a decisive victory.

The Jim Crow Era, 1901-1950

In the aftermath of the disfranchising campaign of 1900, voting by black North Carolinians almost disappeared, as threats of violence and discriminatory enforcement of the literacy test [11] took a massive toll on black voter registration. [footnote omitted] Without a black electorate to stimulate white fears, white politicians found that inflammatory racial appeals had limited political usefulness and tended to abandon them. Without black supporters, the Republican party was reduced to a small fraction of white voters, mostly in mountain counties and Piedmont towns. Political power in the state was exercised almost entirely by white Democrats. As the North Carolina economy turned increasingly to business and industry, urban leaders found the cruelest forms of racial demagoging distasteful and bad for business, and state leaders began to encourage a "moderate" program of racial harmony, based on a combination of uncompromising support for segregation, with a toleration for gradual and limited black progress and a rejection of the most violent forms of race-baiting which often prevailed in the Deep South states in the first half of the twentieth century.

This fragile facade began to crack in 1948, when the national Democratic party included a civil rights plank in its campaign platform, and Strom Thurmond of South

Carolina headed a "Dixiecrat" presidential candidacy in protest. In 1950, the facade disintegrated entirely, when Willis Smith defeated incumbent Frank Porter Graham in a Democratic primary campaign for nomination to the U.S. Senate.

Graham had been appointed to the Senate on the death of his predecessor and campaigned for election in his own right, [12] beginning with the 1950 primary. A personally popular but politically controversial liberal, Graham had been a prominent support [sic] of Franklin D. Roosevelt's New Deal policies and had given qualified support to the civil rights policies of the Truman Administration. In the runoff primary of June, 1950, supporters of runner-up Willis Smith distributed anonymous leaflets warning "White People Wake Up! . . . Frank Graham Favors Mingling of the Races." Rumors spread that Graham had appointed a black candidate to West Point and doctored photographs showed Smith dancing with a black woman. Jesse Helms, a young announcer for WRAL radio in Raleigh, was an active Smith supporter who played a leading role in the campaign and later served as the victorious Smith's legislative assistant. [footnote omitted]

*From the Smith-Graham to the
Voting Rights Act, 1950-1965*

The successful use of race-baiting tactics in the Smith-Graham campaign demonstrated the vulnerability of some North Carolina white voters to racial appeals in an atmosphere of changing race relations and renewed struggle for black civil rights. After the *Brown* decision of 1954, white fears of desegregation intensified even further, and appeals to racial prejudice reemerged as a regular feature of North Carolina's politics. The "moderate" atmosphere of the preceding fifty years, moreover, had given North Carolina a small but significant [13] black electorate, concentrated in many of the Piedmont

cities now included in the 1991 Twelfth District, and numbering some 40,000 by 1940. [footnote omitted] A standard ploy of post-1950 elections was for competing white candidates to accuse each other of seeking the votes of these black citizens, or otherwise demonstrating an insufficient loyalty to the principle of racial segregation.

In 1954, for example, supporters of Alton Lehman distributed an endorsement of rival Ken Scott by black political leader J.H.R. Gleaves, in order to discredit Scott with white voters. Scott responded with accusations of fraud and a strong endorsement of segregated schools. [footnote omitted] The following year, North Carolina Senator Sam Ervin drafted a "Southern Manifesto" pledging resistance to the desegregation process ordered by the United States Supreme Court in the *Brown* decision. Three North Carolina representatives were among the few who refused to join 101 southern members of Congress in signing the manifesto. These representatives then became the target of many political attacks by "The Patriots of North Carolina," a segregationist group. All three indicated support for lawful opposition to integration, but two of the three were defeated for reelection in 1956. Luther Hodges, an avowed segregationist and the successful Democratic [14] candidate for governor in that year was also accused of insufficient support for segregation in that election. [footnote omitted]

Similar tactics persisted into the next decade. In 1960 Dr. I. Beverly Lake ran a strongly segregationist campaign for governor. Opponent Terry Sanford replied to Lake's attacks by describing Lake as an extremist who would provoke federal intervention and bring about the very integration both men opposed. Sanford was likewise the target of anonymous leaflets charging him with being soft in the race issue. [footnote omitted]

The gubernatorial contest of 1964 featured similar exchanges. Dr. Lake again made a strong defense of

segregation, forcing his rivals Dan Moore and Richardson Preyer to advertise their opposition to the civil rights legislation then before Congress. After losing in the first primary, Lake threw his support to Moore, proceeded to charge Preyer with secret support for integration. The tactic succeeded, and Moore won the primary and the general election which followed. In the same year, presidential candidate Barry Goldwater likewise sought votes in [15] North Carolina by stressing his opposition to the Civil Rights Act of 1964. [footnote omitted]

From the Voting Rights Act to the Present, 1965-1994

The passage of the 1965 Voting Rights Act gradually changed the political climate of North Carolina. Under federal protection, the percentage of eligible black voters rose from 39.1 percent in 1960 to 50.9 percent in 1982. Forthright denials of blacks' legitimate rights of citizenship were abandoned by mainstream politicians, though subtle appeals to white racism persisted. Continuing a trend which had prevailed since the New Deal, most black voters adhered to the Democratic party, while whites who rejected changes in state race relations swelled the ranks of an insurgent Republican party. Strong two-party competition reemerged in North Carolina, leading to the Republican sweep of the presidential, senatorial, and gubernatorial elections in 1972. In this context, Democrats were not tempted to alienate their valuable black supporters by appealing to white racial prejudice. Republicans likewise eschewed an overtly racist image, unwilling to alienate "swing" voters who might be repelled by such tactics, though perhaps drawn to Republican programs for other reasons. Under these new [16] circumstances, political aspirants who sought to tap hidden veins of white resentment at black progress resorted to "coded" messages. Ambiguous words or phrases like "forced bussing" or "job quotas," which might have little racial content on the surface, appeared in political advertising in such a way as to convey to

certain audiences that the sponsoring candidate would be less sympathetic to black aspirations than his opponent. The use of these more subtle racial appeals maintained a climate in North Carolina politics which continued to hamper black voters in the equal exercise of their constitutional rights.

The changes did not come instantly. In 1966, for example, Republican challenger Jim Gardner toppled veteran Fourth District Democratic congressman Harold Cooley with charges that Cooley had bowed to federal pressures for desegregation. Gardner was aided by the distribution of racist leaflets on his behalf by leaders of the Ku Klux Klan. Cooley had faced similar charges in 1956, with more success. Republican challenger John East made similar charges against Democratic representative Walter Jones in the First District. Portions of both these districts now lie within the 1991 First District of North Carolina. The election took place against a backdrop of violent intimidation against black families who proposed to register their children in formerly all-white schools. [footnote omitted]

[17] Newer forms of racial coding appeared in the 1968 and 1972 presidential candidacies of George Wallace and the 1972 senatorial campaign of Jesse Helms. By this time, white concern over racial mixing in public schools had shifted from the simple presence of some black children in predominately white schools to the prospect of court-ordered bussing for racial balance. Wallace's advertisements appealed directly to this fear and linked it to more overtly racial issues by calls "to repeal the so-called 'Open Harmony' law." [footnote omitted] Similar associations attached to the 1972 Helms campaign. Helms was a prominent television commentator who had a well-established reputation as an opponent of the civil rights movement of the 1960s. In 1972, in his first senatorial campaign, Helms emphasized this established reputation by the slogans "you know where he stands"

and "He's one of us" and linked it to contemporary concerns by his opposition to "forced bussing." Endorsement by the Grand Dragon of the North Carolina Ku Klux Klan undoubtedly served to cement the association of Helms with opposition to changes in race relations in the minds of black and white voters alike. The use of racial code words in Helms campaign materials drew press commentary when it appeared in his successful 1972 Senate bid and has continued to do so in the senator's subsequent campaigns. [footnote omitted]

[18] A striking series of coded messages likewise appeared in small town North Carolina newspapers in the spring of 1983, when Jesse Helms was preparing for an expected challenge by Governor James B. Hunt. "What North Carolina Newspapers Say About Voter Registration" featured a picture of Jim Hunt sitting beside the Rev. Jesse Jackson, at a camera angle which showed Jackson to be much larger and thus dominant over Hunt. Accompanying quotations warned of the prospect of increasing black voter registration and asked "Is This a Proper Use of Taxpayer Funds?" Without directly saying so, this ad suggested that Governor Hunt was dominated by Jesse Jackson and black voters. As political journalist Joe Doster remarked at the time, "the primary motive is simply to make the association between Hunt and blacks and to raise fears among whites that Hunt is a captive of black voters." [footnote omitted] Structurally, the ad has a close resemblance to comparable images from the 1898 "White Supremacy" campaign, especially such cartoons as "The Source of the Governor's Inspiration" (*News and Observer*, September 30, 1898) and "The New Slavery" (*News and Observer*, October 15, 1899). Subsequent ads in the same series repeated the alleged ties between Governor Hunt, black political leaders, Jesse Jackson, Julian Bond, and Harold Washington while another display featured a picture of striking black school [19] teachers and linked Hunt policies to "the calling of strikes" and general disruption of the education of our children." [footnote omitted]

Unfortunately, Governor Hunt himself was not the only victim of this kind of campaigning. The 1983 Helms ads clearly appealed to white fears of black voters and black elected officials, and thus undermined the efforts of black citizens to exercise their political rights by encouraging the belief that political activities by black[s] can only be threatening to whites.

Themes addressed in the 1983 Helms ads remained current in North Carolina politics through the early 1990s. Perhaps the most famous example occurred in Senator Helms' 1990 reelection bid against Democrat Harvey Gantt. Polls showed that Gantt, a black man, had been leading until the final week of the campaign, when a television ad began to run which showed a white man's hands crumpling a job rejection notice. The voice of an announcer declared, "you needed that job, and you were the best qualified, but it had to go to a minority because of a racial quota of the sort enshrined in Ted Kennedy's quota bill." This advertisement has been widely recognized by academic and journalistic experts to have had a powerful impact on the election, galvanizing Helms' core constituency, increasing voter turnout, and building an unassailable majority for the incumbent. Its status as an appeal to racial fears and resentments has also [20] been widely recognized, as it tapped into prominent themes in Helms' political image dating back to the Smith-Graham campaign of 1950. [footnote omitted]

It is important to realize, however, that the "white hands" ad was not an isolated example of racial appeal in an otherwise color-blind political process. Numerous political messages of the early 1990s in North Carolina sought to undermine opponents by associating them with unpopular black politicians. In August, 1990, Senator Helms had issued a fund-raising letter to supporters which mentioned Harvey Gantt's name twice, but referred six times to Ron Brown, identified as "National

Democrat Chairman" and "a former assistant to Senator Ted Kennedy." Other Helms campaign material featured Brown's picture without mentioning Gantt at all, or featured pictures of Gantt's black campaign manager, pointedly reminding viewers of Gantt's base of support in the black community. [footnote omitted]

[21] Similar approaches have appeared in the campaigns of other recent North Carolina candidates. A particularly blatant example appeared in rural Columbus County, parts of which now lie in the First District. An anonymous leaflet warned local voters in 1990 against "*The Negro Vote*, which is delivered by such political organizations as the local NAACP Chapter, headquartered in Whiteville and Club 15 in Tabor City," and predicted that "more *Negroes* will vote in this election than ever before." [footnote omitted] In a statewide setting, the first television advertisements for D.M. "Lauch" Faircloth, successful Republican candidate for the U.S. Senate in 1992, began with denunciations of "Ted Kennedy's civil rights quota bill." Television advertising in Jim Gardner's 1992 campaign for governor against Jim Hunt included "a TV commercial reminiscent of the 1988 presidential campaign's Willie Horton ads, featuring long lines of trudging black convicts," intended to suggest that Hunt was soft on criminals. [footnote omitted] Republican ads in the 1992 presidential election warned that "If Bill Clinton is elected President, Jesse Jackson will be a U. S. Senator." [footnote omitted] At least two campaigns in 1992, one local race is a part of the Twelfth Congressional District, and one statewide race, featured [22] "parallel photo" ads which called voters' attention to the fact that a black candidate was running against a white. In the local race, for district court judge in Forsyth County, the ad for Toni Reemer, a white woman, reminded voters concerned with issues of race and crime that she was endorsed by law enforcement officials, while linking her black opponent, Loretta Briggs, to locally prominent black civil rights advocates. [footnote omitted]

CONGRESSIONAL REDISTRICTING AND THE
POLITICAL PROSPECTS OF BLACK CANDIDATES
FOR CONGRESS

The cumulative effect of this historic and continuing resort to racial appeals in North Carolina politics has been to diminish seriously the opportunities of black citizens for an equal exercise of their political rights. The history of Congressional redistricting in North Carolina and the experience of black candidates for Congress demonstrates this point clearly.

North Carolina has undergone Congressional redistricting four times since the passage of the Voting Rights Act of 1965; in 1965-66, in 1971, in 1981-82, and in 1991. This has been a race-conscious process at all times, but legislators took special pains in 1965-66 and 1981-82 to dilute black voting strength in order to diminish the political leverage of black voters and the political prospects of potential black candidates.

[23] A perennial "problem" has been the disposition of the large and politically well-organized black community of Durham County. A proposal in December of 1965 to create a Research Triangle District composed of Durham, Wake and Orange Counties produced what reporter David Cooper of the *Winston-Salem Journal* called "a private howl from conservatives in Wake." The Raleigh Chamber of Commerce passed resolutions against the plan. During executive session, Wake County Senator Jyles Coggins reportedly warned his colleagues that it "would create a district with a heavy concentration of colleges, white and Negro." When asked to explain this remark before the redistricting committee, Coggins was quoted at one point in debate as saying "let's don't put all our eggheads in one basket," and other testimony before the committee reportedly warned against the political effect of "Negro block votes" in Durham County. [footnote omitted] Reporter David Cooper of the *Winston-Salem Journal* agreed that "beneath the

surface the argugment [sic] was that the presence of so many colleges and Negroes in the triangle might create a district that would elect a liberal congressman," or in this context, a congressman responsive to black political interests. [footnote omitted]

After much debate, the committee finally settled on a gerrymander that put Durham County in the Fifth District with [24] distant Forsyth County, location of the city of Winston-Salem. Durham County Senator Claude Currie explained the reasons succinctly. "Nobody wants Durham. They don't like our Negro situation. They nailed down everything else and then tacked us on." Currie added "there's going to be a lawsuit about this," but the threatened court action never materialized. [footnote omitted]

This racially-gerrymandered "Second District" of 1966 became the political home of Congressman L. H. Fountain, a conservative white democrat. Fountain's district, which included large portions of the 1991 First District, had a large black population, but Fountain opposed the contemporary civil rights movement and was widely perceived as unresponsive to the political goals of black citizens. Early in the 1981 redistricting process, newspapers reported the opposition of Fountain allies to the inclusion of Durham County in a redrawn Second District. In the words of A. L. May, of the *Raleigh News and Observer*, "The likely political impact would be to assure Fountain of tough Democratic primary opposition from Durham Democrats, including black candidates." A race-conscious struggle to keep Durham out of the Second District, thereby preventing the election of a congressman more responsive to black [25] interest than Mr. Fountain, became the centerpiece of a prolonged redistricting controversy in 1981. [footnote omitted]

Fountain's supporters were initially successful in keeping Durham County blacks out of his district and created a long, narrow, rural district that many observ-

ers compared to a fishhook. "This would stretch the 2nd halfway across the state," protested Rep. Kenneth B. Spaulding, "a black legislator from Durham County, but the legislative majority did not reject its "bizarre" shape or label a case of "political apartheid." [footnote omitted]

North Carolina's redistricting plan was denied pre-clearance by the U.S. Justice Department on December 8, 1981, on the grounds that it violated the terms of the Voting Rights Act.

The redistricting struggle began again, with observers in agreement that "the location of Durham County - and its politically potent black community - is the key to the congressional redistricting fight." [footnote omitted] Durham County was included in the Second District, however, and Representative Fountain announced his retirement from politics when black candidate H. M. "Mickey" Michaux announced his intention to seek the seat.

[26] Subsequent events proved, however, that substantial barriers remained to black electoral success in North Carolina congressional elections. The new Second District had a forty percent black population, but Michaux was opposed by white democrat, Tim Valentine. Though Michaux led voting in the first primary, Valentine triumphed in the second, after running ads which touched on well-worn racial themes, warning against "the same *well organized block [sic] vote* and predicting that "my opponent will again be *bussing his supporters* to the polling places in record numbers." [footnote omitted] Aided by such tactics, Valentine won the second primary by 56 percent and went on to victory in the general election.

Similar racial appeals have played an important role in Congressional elections of the 1990's. Representative J. Alex McMillan, of the 9th District, used a 1990 fund-

raising letter to fan worries "the potential danger of a sophisticated get-out-the-vote effort among the core Gantt constituency - a constituency that particularly exists in substantial numbers in the most populous part of my district, Mecklenburg County." [footnote omitted] As candidates for the U.S. House and U.S. Senate, of course, McMillan and Gantt were not running against each other, but the letters' "thinly veiled racial overtones" were part of a continuing tradition in Tar Hell [sic] politics.

* * * *

Defendant-Intervenors' Exhibit 502

STATEMENT OF JOSE F. ALVAREZ

I, Jose F. Alvarez, under penalty of perjury, state as follows:

1. I am a resident of Greensboro, North Carolina. Currently, I am the political director of the Amalgamated Clothing & Textile Workers Union (ACTWU). In that capacity I am responsible for organizing the union's political activities. This includes the Union's activities in political education, voter registration, fundraising, campaigns about particular issues, and organizing the union efforts in various elections.
2. I am familiar with the demography and character of District 12, and the ACTWU locals in North Carolina, because prior to assuming my present position I was in charge of the Central North Carolina District of the union. This ACTWU district covers most of our plants in North Carolina, except for two concentrations in Eden and Roanoke Rapids, North Carolina. This Central North Carolina ACTWU district is basically the Piedmont corridor. The I-85 corridor is where I spent 4 years in the ACTWU district. I spent four years in which I mainly drove up and down that corridor representing workers in the 12th district.
3. The Amalgamated Clothing & Textile Workers Union represents approximately 11,000 workers in North Carolina. There are 17 locals in the ACTWU Central North Carolina District, 12 of these locals are in the 12th District. There are two concentrations of ACTWU locals in North Carolina, and these are mainly found in the 1st and 5th Congressional Districts.
4. What distinguishes the 12th District is the obvious row of urban centers in Charlotte, Greensboro and Durham that it encompasses. It is really the only urban district in North Carolina. It also includes the industrial

towns of the Piedmont. The district incorporates not just the places where the plants are located, but also the communities in which the employees reside.

5. When the district got formed and we began to look at the configuration, we began calling it the North Carolina Textile Congressional District. While I support the goal of creating the first black district since reconstruction, and the election of the first black congressman since reconstruction, I was also excited that this was the first textile district. Whenever I introduce Mel Watt at functions, or when I reported to our members the final conclusion of the redistricting process in North Carolina, I would excitedly report to them that not only had North Carolina gained fair representation for blacks in the state, but that now there is fair representation for textile workers in North Carolina as well.

6. The North Carolina Textile Belt, is made of small towns, like Hillsboro, Burlington, Haw River, Graham, High Point, Thomasville, Salisbury, Cornelius and Gastonia[.] This is where the plants are. Historically, the industry was organized around mill towns. The textile companies would set up the towns, and the people lived and worked in the towns. Not only are the textile plants located in these towns, but the furniture plants are also located in these towns and the workers live there too. A lot of the small farmers in these towns are actually textile workers as well. They have small pieces of land and they can't live off farming any more, so they work in the mills.

7. District 12 is a two and one-half (2 1/2) hours drive from one end of the district to the other. Greensboro is in the middle of it. In my new position as National Political Director, I have learned that with respect to other congressional districts, it is among the easiest and most simple to organize and get around in. After the district lines finally were drawn, during the primary season it was nothing for us to get people together on a Saturday

morning to talk about candidate positions and issues. It was a joy to get people together, all of whom lived in the 12th District, who previously lived in as many as six congressional districts. After the 12th was created, and I began talking about it as North Carolina's new textile district, we were able to regularly organize people for issues discussions and for meetings with the candidates. I'm talking about people being able to leave their houses in the morning for a meeting and be back at home for lunch.

8. In the 1980s I worked in Georgia in a congressional district that was majority white. It was super long, and wound through all of rural Georgia where there were no interstates. At different times we tried to bring together groups of people from the district with common interests and it was virtually impossible. The roads made it impossible to get together and there were no real communities of interest. That is not a problem in the 12th District here in North Carolina.

9. For us, the primary concerns are jobs, jobs, jobs. Our industry is based on lower wage-type jobs, we do have some high tech plants, however even in those plants we are facing threats from the globalization process. Many companies are rechanneling their investments towards other countries in Latin America and the Caribbean. Companies that are not able to do that are being threatened by competition from these countries that have lower labor standards, wage standards, and environmental standards.

10. Questions of education and training are also critical in all of the towns in the North Carolina Textile Belt. We are talking about both retraining of workers and preparation for kids. What kinds of jobs are they being prepared for? How are all workers being prepared for the new economy? Retraining suggests that there are jobs waiting, however, we have problems because even when

there is retraining, there is not necessarily a job waiting at the other end of it.

11. One of my main interests is in getting regular working people involved in the political process. I have found that working people in the mill towns of North Carolina are often particularly disengaged in the political process. I am comparing the mood here in North Carolina to what I saw in Georgia and Alabama. There are mill towns in North Carolina where I would be surprised to find a 5% voter registration rate. Part of this low participation rate is a vestige of mill village mentality - a general sense that it is not your role to have a say in politics. What is so exciting about the 12th District with its commonalities of interest - for example, every candidate who ran for Congress had to speak to our issues - is that it has facilitated the political involvement of people in these small towns. The fact is that now, people who run for office in District 12, have to address these concerns in a way that the Congresspersons who ran in the several different districts that used to cover this area, never did before.

12. District 12 is a significant improvement over the situation in 1980. Then even a small town like at Salisbury was divided into several districts. While towns may still be divided in the 1990 plan, to some extent, the concentration of the locals is in the 12th. One plant I have in Greensboro has 2000 workers. They are represented by 3 different congressmen, but 75%-80% are represented by whoever represents the 12th District. One big concentration of workers that are not in the 12th are excluded not because the city of Greensboro is split, but because they live in a different city altogether. Many of these workers have come to work in the 12th after a plant closed up where they lived. Part of Greensboro is in the 6th and part is in the 12th, but our people who are in the textile mills are all in the 12th—the 12th covers the textile workers.

13. No white members of ACTWU have expressed any concern about being in a majority black district. There tends not to be overt conflict among the races in our plants. Our white members have been actively involved in the congressional campaigns. We have some members who registered for the first time in their lives to vote in the 12th District Congressional campaign.

14. There are a variety of issues that concern our members and we feel we have been successful in communicating these concerns to Congressman Watt. For example, health and safety reform (sparked by Imperial chicken plant fire) has been a major concern. Congressman Watt of the 12th District has been a very outspoken advocate for health and safety reform. Unemployment benefits extension, the economic stimulus package, job creation, these are also issues of great concern to our members, black and white, and again we have found Congressman Watt of the 12th District to be very responsive on this. Finally, his vote against NAFTA, and particular [sic] his concern that it did not deal with retraining, was representative of the views of our membership.

15. One of ACTWU's major concerns is with political participation by a constituency that has not found a way into the political process. We think District 12, and measures such as motor voter, which was also supported by Congressman Watt, will be helpful in stimulating this kind of political participation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 23 day of March, 1994.

/s/ Jose F.

/s/ Alvarez

Jose F. Alvarez

Defendant-Intervenors' Exhibit 502 (cont'd)

STATEMENT OF DR. ROBERT ALBRIGHT

I, Robert Albright, under penalty of perjury, state as follows:

1. For 13 years, beginning in 1981, I was a resident of North Carolina. From 1981-1983, I served as Vice Chancellor for Student Affairs at the University of North Carolina at Charlotte and from 1983-1994, I served as President of Johnson C. Smith University in Charlotte, North Carolina. I am currently employed as Executive Vice President for Programs, Research, Development and Field Services for the Educational Testing Service (ETS), in Princeton, New Jersey. A copy of my Curriculum Vitae is attached as Exhibit 1 to this Statement.

2. Founded in 1867 by the Presbyterian Church, Johnson C. Smith is a private historically black college. The university is a coeducational undergraduate institution, enrolling approximately 1,400 students, almost evenly divided between men and women. Approximately 1,100 of the 1,400 students live on the campus of the University. It is situated on a 110 acre campus located approximately 2 miles from downtown Charlotte. The university is a member of the United Negro College Fund, and several other educational associations.

3. Johnson C. Smith is one of six historically black colleges which are located in the Twelfth Congressional District. These include Bennett College, Livingstone College, North Carolina Central University, North Carolina A & T and Winston-Salem State University. The locations of these institutions are shown on the map attached as Exhibit 2 to this statement. Most of these institutions are located in urban areas. In fact, for the most part, they are located in the heart of the urban areas, and more specifically in communities one would describe as historically black communities. These institutions play

a particular role by attempting to address the pressing urban problems faced by the communities in which they are located.

4. For example, Johnson C. Smith is extremely involved in addressing the kinds of problems that arise in an urban center like Charlotte. The university is located on the west side of Charlotte, in a predominantly minority community, and it is actively involved in serving as literally the intellectual and cultural hub of the black community of Charlotte. Over the past ten years the university has been very actively involved in attacking and addressing some of the urban problems which affect not only minority people, but other individuals in the Twelfth District and on the west side of Charlotte. We have, for example, launched a series of pre-college enrichment programs, to help improve the educational opportunities for minority youngsters, from the earliest grades through high school. Like the other historically black colleges in the district, we sponsor federally supported Upward Bound programs to help prepare high school students for college. Like several of the other historically black colleges in the district, we sponsor the National Youth Sports Program, a large-scale program supported by the NCAA, to give junior high school students a safe environment in which to play and learn during the summer. Johnson C. Smith University, like an increasing number of the other historically black colleges in the Piedmont, is also broadly and deeply involved in community development. Along with 12 neighborhood associations in our community, we began *Project Catalyst*, which is designed to revitalize these communities and to provide economic development and affordable housing opportunities, to coordinate human services needs and to improve the overall image of the west side corridor. The needs addressed by our project are common to the communities surrounding all the historically black colleges in the Piedmont.

5. The historically black colleges share a number of similar interests because we are all deeply committed to serving our respective communities. We also need special assistance in trying to leverage additional support (particularly federal support) to help us with our educational and community support programs. We are similarly situated in terms of serving in a very broad way the immense and diverse needs of the communities in which we are represented and, again, in serving as the cultural, social and political hubs of our communities. On a federal level, issues which are of importance to historically black colleges include student financial aid, federal funding for elementary, secondary, and post secondary education, education reform, accreditation, community economic development, grants and loans for housing and small business, and issues of importance to minorities generally.

6. There is, in my view, an advantage to having most of the historically black colleges in the state in one congressional district. To the extent that we have a collection of such colleges with one congressman, it allows that congressman to serve us far more effectively than we have ever been served before. Instead of responding to an individual initiative from one school, the congressman can hear a unified voice. Congressman Watt, for example, has had several meetings in which all of the institutions in his district have come together to talk about mutual interests, to form plans, and to establish a consortia of efforts to develop programs which more broadly represent a great collection of minority citizens in the state of North Carolina. Congressman Watt has reminded us of the many ways in which the interests of historically black colleges and those of minorities are the same. He has exhorted the historically black colleges to work harder and take even more of a leadership role serving those common interests. Because of Congressman Watt's focus on the historically black colleges in the district, the institutions have begun to

think collectively in a way they have never done before. While the institutions had previously shared needs, interests, and culture, our being joined by common congressional representation has greatly enhanced our joint efforts.

7. We did not find much resonance with our prior representative, Congressman McMillan, to support the efforts for which we were seeking federal support. Our relationship was not adversarial; in fact, he serves on the Johnson C. Smith University Board of Visitors. Congressman McMillan has always been cordial and friendly with us but he has not addressed the needs of our institutions in a way that we felt those needs should be addressed. We have frequently written to Congressman McMillan, and he has responded with nice letters which were polite, but we never felt he understood the unique nature of historically black colleges. He did not understand or fully support the issues which we were concerned relating to the social problems in our university's primarily low-income neighborhood. Part of the mission of Johnson C. Smith University and the other historically black colleges is to improve the quality of our neighborhoods, establish community development corporations, and partnerships between schools. Johnson C. Smith's pleas to Congressman McMillan concerned these issues, as well as the educational and funding issues.

8. In contrast, we have worked closely with Congressman Watt on a variety of issues ranging from the concern about student financial aid for impoverished students, to mechanisms to generate more support and to provide educational opportunities for our students. We have discussed broader educational issues, including accreditation, desegregation, and the President's new community service program. We have discussed how we as institutions might play a large role in the necessary reform of elementary and secondary education and prepare better students. Congressman Watt has taken

the initiative on a number of these issues. He supported the President's Community Service program, which is important to us because it brings together issues of opportunities for our students and support for inner-city communities in which our institutions are located. Congressman Watt also supported and forcefully advocated for the President's Initiative on Historically Black Colleges. This initiative requires all federal agencies to set aside funds for historically black colleges and instructs the Secretary of Education to oversee those programs so that the funds will actually be distributed. The President's Initiative will result in more federal dollars for historically black colleges than ever before. Increased support for historically black colleges benefits all citizens, not simply minorities, by improving educational opportunities for black students who will become leaders in both the minority community and the community at large.

9. Congressman Watt has also been active in getting the historically black colleges in the Twelfth Congressional District more involved in health care issues. This is an area in which the neighborhoods surrounding the colleges look to those institutions for leadership. Health care issues are important to all citizens in the Twelfth Congressional District, but the low-income and minority residents of the district also share specialized needs and concerns with respect to health care. Encouraging the historically black colleges to take a leadership role in health care reform ensures a wide-ranging debate and consideration of the unique concerns of our communities.

10. Congressman Watt has made a special effort to keep historically black colleges informed of important developments and issues before Congress. We have been receiving mailings from the Congressman's office on a weekly basis, informing of us of bills before Congress and their implications for historically black colleges. One

mailing advised us of a student internship program and not only encouraged us to nominate some of our students for the internships, but also asked us to send the Congressman a copy of our nominations so that his staff could track the nominations. We never had any contact from Congressman McMillan's office except in response to our specific inquiries.

11. I think the Twelfth Congressional District is critical for several reasons. First, it strikes me that given the peculiar demography of North Carolina, it is highly unlikely that we would have a black Congressman but for the presence of something like the Twelfth District. Moreover, I think a very important aspect of having a black congressman is that it provides a sense of hope and inspiration for our youth. The presence of Mel Watt demonstrates that aspiring to become a congressman is not outside the boundaries of a young person who has an interest in politics.

12. Secondly, I believe there is some value in having one congressman who understand[s] urban issues and urban problems and is willing to and able to affect those issues and problems across the state which concern minority citizens and their communities. Representing many communities, rather than one community, allows that person, I think, to have more leverage in the halls of government, because generally it is very difficult for an institution, or even to some degree a city, to get new money for projects designed to serve minorities and the disadvantaged. Therefore Mel Watt has a distinct advantage when he goes to speak to people in the various departments (all of which have special initiatives set aside to address these problems). He can really represent a consortia of institutions rather than a single institution, and he can represent a consortia of cities or at least urban neighborhoods and communities, rather than a single community. 13. I believe there is a distinct advantage in having one congressman serving the

Twelfth District. Even though it is a long district and consumes a lot of Congressman Watt's time and energy, he has been remarkably successful in visiting each of the communities he serves. However, even more important, he has been remarkably effective, I believe, in calling the communities together and, in fact, compelling us to think about problems on a much broader scale than our own individual interests. In essence, his style and approach has compelled us to work together to address community and educational problems that are more macro in scope than micro — and to that extent I believe that the communities we serve will benefit immeasurably from that process.

Defendant-Intervenors' Exhibit 502 (cont'd)

STATEMENT OF DENNIS RASH

I, DENNIS RASH, under penalty of perjury, state as follows:

1. I am a resident of Charlotte, North Carolina. Originally from Lenoir, I have lived in North Carolina all of my life, except during the time I attended the University of Virginia Law School. I live and work in the 12th Congressional District.

2. I am President of NationsBank Community Development Corporation. I have held this position since December of 1991 when NationsBank Community Development Corporation was formed as a wholly owned, public interest subsidiary of NationsBank following the merger of NCNB and C & S Sovereign Bank. From May 1978 until December 1991 I was President of NCNB Community Development Corporation, a not-for-profit subsidiary of NCNB National Bank of North Carolina. Prior to that I had been Dean of Students at the University of North Carolina at Charlotte since 1970 and a member of the faculty of the College of Business Administration. Between September 1965 and November 1970 I was an attorney with the firm of Moore and Van Allen in Charlotte.

3. I have known Congressman Watt for almost 20 years and have worked with him periodically on community development matters. I first had occasion to work with Mel Watt when he became an original board member of NCNB Community Development Corporation in May, 1978. While in private practice, he represented NCNB Community Development Corporation in a number of real estate transactions.

4. My professional experience in the past fifteen years has been in the area of central city development and redevelopment. The goals of both NCNB and Nations-

Bank Community Development Corporations have been to develop a balanced program of central city revitalization, ranging from economic development and small business assistance projects to low- and moderate-income housing programs. From an initial capital base of \$250,000 we have to date developed revitalization projects in excess of \$125,000,000 in North Carolina. All of these have been in central city locations in North Carolina and the majority have been in state-designated urban renewal areas or redevelopment areas. We always work in active participation with local governments. We have developed projects in Charlotte, Greensboro, Fayetteville and Raleigh. The majority of our revitalization programs have involved primarily residential projects. However, in Charlotte and Raleigh we have been involved in developing mixed-use projects and some commercial central city redevelopment involving hotel, office and retail properties. In Raleigh we were involved in a revitalization project that developed a retail area.

5. Another significant aspect of our work is consulting with state and local officials about similar revitalization programs in their cities. We have provided consultation services to the cities of Winston-Salem, Durham, High Point, Asheville, and Gastonia. Our assistance and consultation has covered a broad range of projects, giving advice on topics such as funding mechanisms, both private and governmental; zoning issues, and overall strategies for revitalization with an emphasis on creative and effective involvement of the private sector.

6. I have served on a number of national committees, commissions and groups that address urban revitalization issues; including being a faculty member for five years in the Mayor's Institute for City Design, a program sponsored by the U.S. Conference of Mayors and the National Endowment for the Arts. I am a member of, and presenter to, the Center City Task Force of the Urban Land Institute. The Urban Land Institute is a national trade

association. The Center City Task Force was formed after the riots in South-central Los Angeles to develop strategies to deal with deteriorated housing conditions and sub-standard living conditions in American cities. For the past year and a half I have served on the Board of the National Alliance to End Homelessness. This is a national bi-partisan organization that provides policy recommendations to Congress and the Department of Housing and Urban Development. The bi-partisan nature of the organization is signalled by its co-chairs, Susan Baker, wife of former Secretary of State James Baker (a Republican), and Tony Harrington, former General Counsel to the National Democratic Party. In 1988 I was appointed by the North Carolina General Assembly to serve on the Commission on Jobs and Economic Growth which examined the impact of small businesses on the creation of employment opportunities. As part of my Commission work, I was Chairman of the Subcommittee on Natural Resources and Public Investment.

7. Through my participation in all these various groups, I have been able to draw on a fund of information about federal, state and local redevelopment programs and have explored in great detail how the private sector could collaborate with those various governmental agencies. I have been called on from time to time to talk about federal collaborations; and have given testimony before the House Banking Sub-Committee on Housing and Community Development.

8. From my experience, the intrinsic value of the 12th Congressional District is that it is North Carolina's first and only congressional district that is composed of the state's most rapidly growing urban areas. It has a general characteristic that is distinct from the rest of the congressional districts. It is a district that confronts head on the important issues for an urbanizing state. Most other districts in the state connect areas and populations that give rise to a combination of rural and city issues at the

federal level. The 12th District is uniquely urban in its dominant issues.

9. The multiplicity of issues facing our urban centers as the state becomes increasingly populated and urban are critical, complex, and require the undivided attention of a congressional representative. These issues include, in the housing area alone, the need for affordable housing, both for low and moderate income people; the need to rebuild deteriorated housing; the need for first-time and middle-market home ownership, and the need to continue to have housing patterns that characterize a multi-functional center city. The central city areas of the Piedmont region in North Carolina also share similar transportation issues and are increasingly recognizing the importance of exploring alternatives to private automobiles for daily commuting; North Carolina's cities face air and water quality problems that are not shared by rural areas. Likewise, the factors that impact economic development are distinct in the urban areas. All of the cities in the 12th District share the concern over these issues. In that regard the 12th District is very different from many congressional districts that combine urban and rural areas such that there is a smattering of the urban issues but also the need to recognize agricultural or other rural interests. From this perspective, the 12th Congressional District is intrinsic genius.

10. Urban areas, as they grow, find themselves polluting the environment to the point where it threatens the quality of life. The cities of the Piedmont face challenges characteristic of a compression of population, including dealing with a commuting pattern that predominates in the district. Charlotte, Greensboro, Winston-Salem and Durham experience an in-migration of employees every business day along I-85. These patterns relate to the affordability of housing in the central city compared to outlying areas. The commuting choice has

implications for the use of energy, involves infrastructure, air quality and other transportation-related costs. These are all issues addressed at the federal level. They are significant issues that a congressman who represents urban North Carolina should grapple with full time without also having to be an expert on the rural issues, such as tobacco subsidies, which would be required of a congressman representing a less homogenous district.

11. The economic health of all of the cities in the 12th District is heavily dependent on the financial institutions located there. Even though there may be some difference in emphasis among the types of businesses that are situated in the various cities, all need start-up equity; sound business planning and training services; and access to expansion capital, even if they are only modestly successful. These needs predominate in urban areas, and are not a major issue in the state's smaller towns, such as Lenoir, where I am from originally.

12. Having an urban 12th District has facilitated my ability to get information from my congressman's office about public housing programs and other federal programs of interest to me in my work. Successful community development efforts rely on cost-effective federal, state and local support combined with private sector investment. For example, recently the Department of Housing and Urban Development has agreed to help fund a 34.7 million dollar housing demonstration project with the Charlotte Housing Authority to create the conditions for self-sufficiency for public housing residents of Earle Village and First Ward in Charlotte. Nationsbank Community Development Corporation is the program manager of the funds, which will be used for renovation and rebuilding of the housing, as well as for providing a wide range of services to program participants including senior citizen care, child care assistance, and job training. All of these programs have the goal of residents eventually becoming able to pay their rent outright

without financial assistance, and to move out of public housing into affordable housing where they are self-sufficient on a long-term basis. This is a demonstration program which will provide a model for central city revitalization for urban communities throughout the country.

13. There are a growing number of non-profit neighborhood-based community development corporations in the inner city areas of the 12th Congressional District. These groups are one of the key elements in an effort to revitalize communities through a public-private partnership between government, lenders, and neighborhood residents. The neighborhood-based non-profits promote residents' development of skills and self-sufficiency. Federal assistance through grants and loans are critical to the success of these organizations. Having many of these organizations in one congressional district furthers effective representation of their needs.

14. In 1990 NCNB Community Development Corporation prepared a videotape intended to show all of our bank offices, from Texas to Florida to Maryland, why investing in communities is good business. During the filming of this videotape we interviewed a young man who was thirteen years old at the time and lived in a "starter home" we developed in an urban renewal area of Charlotte. We asked him what was different about his life today. His response was: "When I lived in public housing, I used to think the best job I could ever get might be to work in a McDonalds. But now I think maybe I could go to college and even own my own business." Improving neighborhoods, facilitating home ownership for low to moderate income families, and inspiring young people are responsibilities we can better carry out when there is a congressional district in North Carolina along the lines of the 12th district that allows one congressional representative to focus on these needs.

Defendant-Intervenors' Exhibit 502 (cont'd)

STATEMENT OF ROBERT L. DAVIS

I, Bob Davis, under penalty of perjury, state as follows:

1. I reside at 1925 Arnold Drive in Charlotte, North Carolina. I have lived in Charlotte all of my life. I attended public school in Charlotte and Johnson C. Smith University in Charlotte. I am a retired educator, having served as a teacher for fifteen years and a principal for twenty years. I am an African American defendant-intervenor in this case and live in the Ninth Congressional District.

2. I am presently Chairman of the Charlotte-Mecklenburg Black Political Caucus, an organization which I helped to found around 1969-70. I have served as Chair of the Black Political Caucus off and on for a period of ten years.

3. I have participated in and observed politics since 1940 when I was twelve years old. From that time, until the present time, Charlotte politics have been characterized by patterns of racial voting. African-Americans sought public office as early as the 1940's, but without success. Fred Alexander was the first African-American to win public office in Charlotte-Mecklenburg when he was elected to the city council in the late fifties or early sixties. Mr. Alexander was an extraordinarily able politician who was able to get elected by getting the overwhelming majority of African-American votes and garnering enough white votes to win in an at-large system. The at-large system never produced more than one African-American council member. It was only after district representation came to Charlotte in the late seventies that we were able to get more than one African-American on the city council. As a result of district

representation, there are now four African-Americans on our eleven member council, only one of whom was elected at-large and even then, by a narrow margin. There has never been more than one African-American Mecklenburg County Commissioner elected at-large. District representation may result in more than one African-American member of the county commission in the 1994 elections. Without district representation, I am convinced that Mecklenburg County would not elect more than one African-American at a time.

4. The only public body in Mecklenburg County that has elected more than one African-American at large in a given election is the school board which presently has two at-large African-American members.

5. I have run for public office myself seeking an at-large seat and, subsequently, a district seat. I was unsuccessful in both. I ran for an at-large seat on the city council in 1982. Although I led the ticket in the first election, I lost in a run-off. The only other African-American running at the time was defeated also.

6. I ran for a council seat in District I, a majority white district, and lost in a run-off election against a white candidate.

7. I do not know of any election in Charlotte where an African-American candidate has ever received a majority of the white votes. It is only through "single shot" or selective voting that African-Americans have been successful in elective politics in Charlotte-Mecklenburg.

8. Notwithstanding that a number of African-Americans have been elected to office and appointed to public bodies in Charlotte-Mecklenburg, racial politics are still prevalent and largely determines the outcome of elections. Even when Harvey Gantt was elected mayor, he never received a majority of the white votes cast.

9. The existence of racial politics in Charlotte has necessitated the continuation of the Black Political Caucus since its beginning in 1969-70. We regularly interview candidates, black and white, to determine their sensitivity and record on the issues of great importance to African-Americans in Mecklenburg County. Some of the issues that continue to be of prime importance to the African-American community and to the Black Political Caucus are:

- a. Education - We continue to work to assure racial equity in pupil and teacher assignments and hiring and promotion policies as well as the location of schools and the provision of services.
 - b. Housing - The housing pattern in Charlotte remains racially segregated, with a few blacks moving into previously all white areas. There are African-American communities which are without running water and which have outdoor toilets.
 - c. Jobs - Unemployment falls disproportionately upon African-Americans in Charlotte-Mecklenburg. The age old syndrome of being the last hired and the first fired is still evident in too many instances.
 - d. The Environment - There is a continuing tendency to run highways through the black community thus destroying the culture and cohesiveness of the communities and to locate garbage disposal plants and facilities in African-American communities. Interstate 77 was routed through a large and important black cemetery. Only recently, a lawsuit was necessary to stop the location of a sanitation facility in the heart of the larger black west side community.
10. The west side where most African-Americans live in the city of Charlotte is characterized by large areas of

deterioration, blight and total lack of investment and development. There are no major shopping malls, only one major hotel and very few major retail establishments on the west side.

11. Even when promises are made or plans made to spur interest in or development of the west side, those plans are shelved and left to collect dust. When I served on the planning commission, several years ago, there was a plan to build a gateway to the west side at the bottom of trade street near Johnson C. Smith University. Those plans have never been carried out.

12. I recently received a card from the elections board establishing that I am a resident of the 9th Congressional District. I found the card to be very helpful because we have new county commission and school board districts this year. I recall that in April of 1992 prior to the primary election, the Mecklenburg County Board of Elections sent each voter in the county a similar card which identified the voter's precinct and district for city council, county commissioner, state house, state senate, 26th judicial district and United States Congress. A copy of my new voter card and the envelope in which it was sent are attached hereto as Exhibit A.

13. In all the years that I have lived in the Ninth Congressional District, I have had no contact with Congressman McMillan except when I met him one time. To my knowledge he has not visited regularly in the African-American community of Charlotte-Mecklenburg and has no contact with me in my capacity as Chair of the Black Political Caucus. Congressman Watt, on the other hand, has been very actively involved in the issues that effect our community such as housing, homelessness, crime, education, healthcare and the environment.

14. Congressman Watt's election to the 12th District brought great pride to me and to other African-Americans and white residents of Charlotte-Mecklenburg who

recognized that for the first time in 90 years there would be a voice in Congress to advocate for those issues that are of great importance to the African-American community of Charlotte-Mecklenburg and the entire 12th District. His election made us feel, for the first time, that we were included and that our concerns mattered.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

This 23 day of March, 1994.

/s/ Robert L. "Bob" Davis
Robert L. Davis

MECKLENBURG COUNTY BOARD OF ELECTIONS
 741 KENILWORTH AVE STE 202
 P O BOX 31788
 CHARLOTTE NC 28231-1788



PRESORTED
 FIRST-CLASS MAIL
 U.S. POSTAGE
 PAID
 Charlotte, N.C.
 Permit No. 548

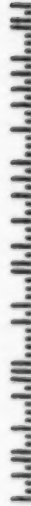
IMPORTANT VOTER INFORMATION

706292

1 SIGN, DETACH, FOLD & CARRY IN YOUR WALLET 2

SIGNATURE OF VOTER

DAVIS, ROBERT L, JR MR.
 1925 ARNOLD DR
 CHARLOTTE, NC 28205-3857



00000 00000

THIS IS AN IMPORTANT VOTING DOCUMENT

RETAIN THIS CARD IN YOUR WALLET OR PURSE AND DESTROY ALL PREVIOUSLY MAILED VOTER CARDS TO AVOID CONFUSION.

- 1. In November 1983 voters approved a new district plan for County Commissioners and School Board consisting of six (6) districts.
- 2. Twenty-three (23) additional precincts and voting places have been created to reduce long lines during major elections.

3. Please note that your precinct number now includes a decimal to accommodate continued municipal annexations and congressional boundaries that cross precinct lines. Example: 15.19 designates Precinct 15 inside Charlotte (1) and the 5th Congressional District (9).

To understand your precinct designation, refer to this table.

Congressional (R, S & 12)	Inside the Municipality of Charlotte (1)	Outside Any Municipality (2)	Other Municipalities (3 Rows 8)
28 - 8th District 19 - 9th District 22 - 12th District	12 - Inside/ 17th Cong 19 - Inside/ 9th Cong	22 - Outside/ 17th Cong 28 - Outside/ 8th Cong 29 - Outside/ 9th Cong	3 - Cornelius 4 - Davidson 5 - Huntersville 6 - Matthews 7 - Mint Hill 8 - Pineville

ADDITIONAL INFORMATION ON REVERSE SIDE.

MECKLENBURG COUNTY VOTER CARD

Mecklenburg County Board of Elections
741 Northpark Ave., Suite 202
Charlotte, NC 28204

William B. Bly
Supervisor of Elections

CITY COUNCIL	COMMISSIONER SCHOOL BOARD	DISTRICTS STATE HOUSE	STATE SENATE	20TH JUDICIAL	U S CONGRESS
1	4	36	40	268	9

03/01/94	DEM	M	B	029.19
026245				

1 SIGN DETACH, FOLD AND CARRY IN YOUR WALLET 2 SIGNATURE OF VOTER

DAVIS, ROBERT L, JR MR.
1925 ARNOLD DR
CHARLOTTE, NC 28205-3857

MERRY OAKS SCHOOL
3508 DRAPER AVE.

SPECIAL NOTICE

This voter card will reflect any changes in your voter registration. These changes reflect information we have received and/or a new voting location, annexation, precinct or district realignment.

Please check information for accuracy. If you find an error printed on this card:

- (1) Note the error and return by mail to P.O. Box 31788, Charlotte, NC 28231-1788.
- (2) Bring the card to the Elections Office, 741 Kenilworth Ave., Suite 202 (Park and enter from rear).

- This card is for information and change of address only.
- You are not required to show your card at the voting place.
- Presentation of this card when voting may assist in establishing your eligibility to vote.

ADDITIONAL INFORMATION ON REVERSE SIDE.

ACTS CANCELLING REGISTRATION

Voter registration will be cancelled (purged) when the Mecklenburg County Board of Elections determines that a voter:

- (1) Moved outside the voting precinct in which voter registered unless address is changed by mail or in person;
- (2) Failed to respond to a notice mailed to the registration address;
- (3) Moved out of Mecklenburg County;
- (4) Is named on a felony conviction list;
- (5) Is named on a death certificate.

For Information About Voter Registration, Call 336-2133.

Recycle



Conserve

**IF YOU MOVE
FILL OUT BELOW
AND MAIL TO:**

**SUPERVISOR OF ELECTIONS
P.O. BOX 31788
CHARLOTTE, NC 28231-1788**

If you move within Mecklenburg County, we will mail you a new voter card.

PRINT FULL NAME _____ APT _____
NEW STREET ADDRESS _____ MO _____
CITY _____ ZIP CODE _____
DATE MOVED ____ / ____ / ____ BIRTHDATE ____ / ____ / ____
DAYTIME PHONE _____ SIGNATURE OF VOTER _____

Defendant-Intervenors' Exhibit 502 (cont'd)

**DECLARATION OF EDDIE DAVIS III
PURSUANT TO 28 U.S.C. 1746**

EDDIE DAVIS III hereby declares as follows:

1. My name is Eddie Davis III. I am a native of North Carolina and have lived in the City of Durham for the past fourteen years. I am an African American defendant-intervenor in this lawsuit. I am a teacher at Hillside High School, which is located in Durham. I serve on the Board of Directors of the National Education Association, which is a national organization with a membership of 2.1 million teachers dedicated to improving the working conditions of teachers and the quality of education in general. I also serve on the Board of Directors of the North Carolina Association of Educators and the North Carolina People for the American Way. In addition, I was appointed by Governor Hunt last year to serve an eight year term on the State Board of Education. I am an active member of the People's Alliance and the Durham Committee on the Affairs of Black People. My address is 119 Masondale Avenue, Durham, North Carolina 27707-3151.

2. Housing in Durham is segregated along racial lines. I reside in a predominately African American area of Durham known as the Hillside Community. Along with other African American communities in Durham, such as Old North Durham, the Hillside Community is located in the urban core of Durham. The urban core has been abandoned by white suburbanites and many upwardly mobile African Americans. It is a racially segregated community that is isolated socially and economically from the mainstream of Durham. This stark isolation results in a variety of disturbing, systemic problems that confront the adult residents in the community and the students that I teach at Hillside High School.

3. Economically, the urban core of Durham is severely depressed. For the past 25 years, there has been very little construction or economic growth in the urban core. Although the Research Triangle area of North Carolina has one of the lowest unemployment rates in the state and the nation, the unemployment rate for African American residents in the urban core is significantly higher than it is for whites in Durham. The technically sophisticated jobs that exists [sic] in the Research Triangle area are simply out of the reach of the vast majority of African Americans residing in the urban core. High-paying, stable jobs requiring specialized skills at IBM, a major corporation located in the Research Triangle, are simply not available to a majority of African American residents in the urban core. In addition, other businesses in the area, such as the American Tobacco Co. and the Durham Hosiery Mill, have downsized or disappeared, thereby eliminating jobs that were once accessible to African Americans residing in the urban core.

4. Segregated housing patterns in the City of Durham and the failure to obey and enforce desegregation laws have led to a reseggregated public school system. For example, Hillside High has a student population of approximately 1000. Out of the total student population, approximately five of the students are not African American. It is not unusual for African American students in the inner core to attend all-black Fayetteville Elementary, all-black Shepard Middle School and virtually all-black Hillside High. In other words, it is common for these African American students to go from kindergarten through the twelfth grade and never have a white classmate. The lack of enforcement of desegregation laws in Durham has created a situation in which social isolation has spawned a unique culture and social perspective that is distinctively African American and, indeed, separate and quite foreign to the white community.

5. For example, African American kids in the urban core develop a separate manner of speech, which often-times hinders their ability to compete in the job market with whites who communicate with prospective white employers in a language that they are comfortable with. The experiences of African American children growing up in the depressed urban core lowers their self-esteem and creates feelings of worthlessness. On weekends, many of my students at Hillside "hang out" at local malls where they come into contact with whites who have more resources and material possessions than they do. Their contact with whites in the "outside" world suggests that they have no control over their destiny, as doctors in community clinics and merchants from whom they purchase goods and to whom they pay bills are often white. After being bombarded with images in the media that portray whites in a positive light and African Americans negatively, they compare their life situations with that of whites and conclude that their lives have no value. This conclusion often leads to destructive attitudes regarding education, conflict resolution and family planning.

6. There is a lack of educational achievement among African American students at Hillside High. Due to segregation and discrimination, both subtle and overt, and wholly inadequate funding for education in the community, African American students in the urban core are not realizing their potential. They have no American dream. The attrition rate at Hillside High is approximately 50%. Approximately 400 student[s] enter Hillside High as freshmen; four years later, approximately 200 graduate. While approximately 60% of Hillside graduates attend either a two-year or four-year educational institution, studies at the University of North Carolina show that a significant percentage of African American students do not return for their sophomore years. Given the level of unemployment in the urban core, many African American students do not see education as having any

value for them. Their experiences dictate that when they grow up, they will be either under-employed or unemployed.

7. African American male students at Hillside High are at risk of extinction. Approximately 45% of the students at Hillside High are males. Of this percentage, approximately 35% have had some contact with the criminal justice system. Male students at Hillside High feel that it is no big deal to leave school to attend a criminal court hearing. The principal at Hillside routinely goes to criminal court to testify regarding the character of students attending the school. Indeed, lawyers often come to school on behalf of students who have broken school rules and argue that a possible suspension could result in a violation of parole.

8. The pregnancy rate among African American females at Hillside is approximately 10%. There is also a high rate of sexually transmitted diseases among students at the school. I currently have one student in my homeroom who is pregnant. At seventeen years of age, she is not emotionally ready to care for a child. I have counselled her about receiving proper medical care and avoiding physical confrontations, since fighting could possible [sic] damage her unborn fetus. As with other students at Hillside who have children, her prospects of achieving in life will be significantly lessened.

9. Violence is an issue of urgent concern in the urban core. There have been shootings at Hillside High. Guns, knives and other weapons have been confiscated on school grounds. School rules at one time prohibited students from carrying book bags, since they can and, in the past, have easily concealed weapons in the bags. Children can now only carry transparent book bags to school. Two years ago, a few blocks from school a student was slashed across the neck by another student with a box opener. Some of the violence stems from the

sale and use of drugs, as some students have been arrested for possession and distribution of illegal narcotics.

10. Adequate health care is another issue of major concern in the African American urban core. As mentioned in paragraph 8, there is a high incidence of sexually transmitted disease and pregnancy among students in the urban core. The Lincoln Community Health Clinic serves the African American community in Hillside. To the average middle class resident of Durham, health care at Lincoln is not adequate. Also, the resources of the clinic are not sufficient to meet the needs of the entire community. Long waits for service are common, and my students often complain about a lack of respect that is exhibited toward them by health care providers.

11. The creation of the Twelfth Congressional District is necessary for residents in the urban core to enjoy democratic representation. The district is urban-based, linking the major cities in North Carolina. There is a constituency of urban poor residents that have severe problems which need addressing. Poor urbanites in Gastonia have commonalities with poor urbanites in Durham, such as crime, high unemployment, and deteriorating schools. Indeed, poor urbanites in Durham have more in common with poor urbanites in Gastonia than they do with residents that are the "haves" in Durham.

12. Congressman Watt, the candidate of choice of African Americans and progressive whites in Durham, is committed to addressing and solving problems facing poor urbanites, including those residents in Durham's urban core. Congressman Watt understands the legacy of segregation and discrimination that is partly responsible for the current state of despair in the African American community. His agenda involves addressing problems plaguing urban residents, which include inadequate education, high unemployment, inadequate health care, substandard housing and violence. During the 1992 congressional election campaign, he came to Hillside

High to debate his Republican opponent. At the debate, he discussed his vision to provide an adequate opportunity to residents to achieve skills in order to secure stable jobs which will stabilize family structures. Congressman Watt has empathy for the urban poor. He has also opened an office in the inner core of Durham, indicating his willingness to be accessible and connected to the community. As a initial step toward solving some of the problems of the urban poor, he is currently scheduling a town meeting in the urban core to deal with the issue of the plight of African American males.

13. The Twelfth Congressional District is also necessary because for the first time in the modern history of North Carolina, African American voters have been given the opportunity to participate equally in the political process and elect their candidate of choice to Congress. In addition, for the first time in recent memory, the urban poor have a voice in Congress. The previous representative of the area, Tim Valentine, was not committed to deal with the systemic problems facing the African American community. As a Conservative Democrat, he seldom came to the African American community until election time. During his initial time in office, he had an office in the inner core of Durham; however, he subsequently moved the office to the suburbs. Tim Valentine was more connected to rural issues. His weakness during his tenure as a Congressman was that he was less experienced in dealing with urban issues than rural issues.

14. Prior to the creation of the Twelfth District and the election of Mel Watt, my students at Hillside, in an indirect way, felt further alienated from the mainstream of society. Role models are important in the struggle to free the African American community from its present state of despair. Congressman Mel Watt serves as an important role model for my students. The students thoroughly enjoyed the political debate at Hillside High between Congressman Watt and his opponent; both they

and I appreciated the respect and attention he accorded them and the direct manner in which he answered their questions. More importantly, his election showed the students that they can reach high political office in North Carolina if they work hard and achieve. As a role model, Congressman Watt is known and respected by the students. During the campaign, Mel Watt's campaign slogan was "Let's Give Em Mel". Fully one year after the campaign, the students still repeat this slogan.

15. The Twelfth Congressional District is also needed because while African American candidates have had some measure of success in Durham County, African American voters have been subjected to subtle and overt intimidation in the exercise of their opportunity to elect their candidate of choice. I have been politically active since I moved to Durham fourteen years ago. I actively participated in the 1982 Henry Michaux campaign for Congress by canvassing door to door, stuffing envelopes, attending informational meetings about the candidate and speaking at meetings on behalf of the candidate. Michaux's opponent, Tim Valentine, engaged in racial appeals. Letters were distributed in the white community warning white voters that Michaux was going to *bus* African Americans to the polls to bloc vote. In addition, Valentine ran radio ads designed to instill fear in the minds of white voters regarding the prospect of the election of an African American to Congress.

16. I also participated in the Harvey Gantt campaign for the United States Senate. Prior to the election, Jesse Helms ran television advertisements in Durham that stated that African Americans were responsible for taking jobs away from whites. The ad concluded that the election of Gantt would accelerate the alleged practice. On election day, whites dressed in suits who claimed to be from the "State" came to a majority African polling place and demanded to see the total vote count. The intimidated African American poll workers, including my

wife, released the totals to them. It was later learned that they were not from the State Board of Elections, but rather from the State Republican Party.

17. The election of African American candidates in Durham is dependent upon two factors - African American single shot voting and the white crossover vote. A few years ago, the Durham City Council was majority African American. One African American councilmember, Clarence Brown, allegedly mismanaged public funds. During the following elections after the announcement of these allegations, all except two African American councilmembers lost their bids for reelection despite overwhelming support from the African American community. The one-term African American mayor also lost his bid for reelection. Thus, white voters essentially punished African American elected officials for the alleged offenses of one African American councilman.

18. Many hard-working, caring citizens in the African American community are working to save African American youth. For example, I recently assigned as a reading project to my class at Hillside High an excerpt from a *Newsweek* article taken from a book by Nathan McCall entitled "Makes Me Wanna Holler". The author is an African American who was raised in a segregated neighborhood and concluded that his life was meaningless and had no worth. He turned to a life of crime and eventually served three years in prison for armed robbery. While in prison, he found that his life had meaning. Upon release from prison, he graduated from college and is presently a reporter for the *Washington Post*. My students read the article and some were inspired by the message that achievement is within the reach of every individual, regardless of personal circumstance. However, the problems identified above which afflict residents of the urban core cannot be solved through individual initiative alone. An effective voice in Congress who can engage the democratic process on behalf of the urban

JA-659

poor is necessary for residents of the urban core to overcome their problems. Thus, the ability of these residents to participate equally in the political process and elect their candidates of choice must be preserved.

I DECLARE under penalty of perjury that the foregoing is true and correct.

EXECUTED on this 24th day of March, 1994.

/s/ Eddie Davis III
EDDIE DAVIS III.

Defendant-Intervenors' Exhibit 502 (cont'd)

STATEMENT OF ELLEN EMERSON

I, Ellen Emerson, under penalty of perjury, state as follows:

1. I reside at 903 Lexington Ave., Greensboro, Guilford County, North Carolina. I am 50 years old. I am a white defendant-intervenor in this case. I live in the Twelfth Congressional District.

2. I have been Chairman and Executive Director of the Guilford County Democratic Party. I was Chairman during the 1990 Gantt-Helms Senate race. I recall that during the last week of the election that year a number of people came to the party headquarters and reported that they had received a postcard in the mail stating something to the effect that they could not vote if they had moved within 30 days of the election. I specifically remember some of the people who received the card, including Herman Gist and John Erwin of Greensboro and Pat Milburn of High Point. All of the people who I know received the postcard were black.

3. I was Chair of the Guilford County Democratic Party when the first election was held for the Twelfth Congressional District. This was the primary in May of 1992. Here in Guilford County, when the split was made between the Sixth and Twelfth Districts, the Board of Elections sent out voter cards to all affected voters telling them what district they were in for each public office. This was done well ahead of time. People affected by the change had prior information about their new district. Of course, even many educated people do not pay attention to a mailing from the Board of Elections. At party headquarters we received some calls from voters who were unsure which district they were in. But in my experience this has happened every single time there has been a change in any district, and sometimes

even when there has been no change. We always have people calling saying, "can you tell me where I vote, who are the candidates?" We had no more of this in 1992 than previously, at least with respect to Democratic Party headquarters.

4. As a resident of the Twelfth Congressional District I have found that there are many important concerns shared by people throughout the district. I have participated several times in the Twelfth Congressional District convention. At these events, blacks and whites have come together in the same auditorium to discuss things that were on everyone's minds. I would estimate that more of the participants were black than white, but white citizens were well-represented and people of both races participated fully in the convention, speaking out on the issues.

5. One of the concerns shared by blacks and whites in the Twelfth Congressional District is obtaining better, higher paying job[s] for the region. Recently we had the announcement that a new postal facility would be located in Greensboro, employing 550 people in jobs paying \$10 to \$15 per hour. Congressman Watt was here for the announcement. He has supported our goal of getting better jobs into our community. He supported the President's economic stimulus package which was one way we had hoped to get jobs into our community.

6. Both black and white people in the district are concerned about inner-city issues, urban crime, education, and economic development. We are also concerned about the budget. These are issues we have in common.

7. As a resident of the Twelfth District I receive a detailed advisory newsletter from Congressman Watt's office on a monthly basis. The newsletter tells about what is going on in Congress and what bills are pending. The Congressman also reports on the committees he is serving on and what they are doing. One of his commit-

tees is banking, which is very important to us because of the financial industry in the district. The newsletter includes Congressman Watt's entire schedule for the month, including all meetings. It addresses issues which are of common concern to black and white voters in the district. Some issues I can remember seeing in the newsletter are the budget, education, crime, community lending, issues included in the Clinton Agenda — anything that is considered a major issue by the American people. The Congressman explains his views and thoughts on the issues. The newsletter is not exclusively oriented toward a "black agenda," although issues which I know to be of importance to the black community have certainly been addressed thoroughly.

8. Congressman Watt has established satellite offices throughout the district so that people are able to have access to him. This service was never provided by my previous congressman, Howard Coble.

9. As a white voter, I have not in any way felt excluded from the political process since being included in the Twelfth Congressional District. In fact, when the district was first announced, I did not think anything about it. I saw no problem with it. I could see the various institutions and commonalities throughout the district. I think you could go anywhere through the district and find people have concerns much along the same lines. We have a lot of commonalities as people, living along the I-85 corridor in some of the largest and most urban cities in the state, having a similar economic base including textiles, furniture and financial institutions. We share a similar southern urban culture. While there are black and white aspects of that culture, we do in many ways have a common history and culture. The Twelfth District is also an area which has received an influx of northerners in recent years. This is true in many parts of the district, but particularly in the cities where many major corporations have relocated. The addition of non-south-

erners into our communities has made us a bit less provincial than other parts of North Carolina.

10. I have not found that race has been at all a divisive issue in the Twelfth Congressional District. In fact, when Mel Watt was running for Congress in the new district, there was a great coming together of people who would not normally come together. There was a lot of interaction between blacks and whites. There was a discovery for a lot of white people that when they spoke with Mr. Watt or other black people at events that we were not that different. It has been my experience, as involved as I have been in politics, that the Twelfth District has done a great deal to bring people together where they were formerly separate.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

This 22 day of March, 1994.

/s/ Ellen F. Emerson
Ellen Emerson

JA-664

Defendant-Intervenors' Exhibit 502 (cont'd)

[Letterhead of Congressman Melvin L. Watt, House of Representatives
Washington, D.C. 20515-3312]

Advisory Newsletter

February 1994

Mel's Comments

Dear Friend,

Congress will tackle a slate of issues in 1994 that will affect every American. These issues will certainly include crime and health care reform and may well include welfare reform and jobs.

One issue I hope will not get lost in the busy agenda is the issue of worker retraining. A comprehensive worker retraining initiative would help crime, welfare, jobs and even health care reform legislation.

I was told by the Secretary of Labor Robert Reich last year during our NAFTA discussions that the administration planned to propose worker retraining legislation to Congress in 1994. Since then I have been working with Secretary Reich and several other members of Congress to help shape the legislation and to help focus the debate. We have identified two important objectives - one dealing with the legislation itself and one dealing with the focus of the debate.

First, we believe it is necessary for training and retraining to be linked to jobs if training programs are to work. Too often in the past training programs employed participants temporarily but provided no long term employment prospects. Our objective will be to assure that the new legislation assures newly trained workers an existing or new job.

Second, we believe it is important to acknowledge the fact that worker retraining legislation will benefit employers, employees *and* taxpayers. Worker retraining

benefits workers by providing them the skills needed to obtain work. But it also benefits employers by providing skilled workers who are trained to do the jobs employers have available and it benefits taxpayers by getting unemployed people off welfare and unemployment roles and by expanding the tax base. Workers, employers and the public will need to help galvanize the political support needed for passage of this important training and retraining initiatives.

I hope you will support my efforts to get new worker retraining legislation enacted. I will keep you informed of these efforts.

Legislative Update

OUTLOOK FOR 1994: THE HOUSE. The House of Representatives reconvened on January 25. President Clinton delivered his State of the Union address and presented the Administration's objectives for the coming year to Congress and the nation.

The House agenda is full of issues which could have substantial impact on the 12th district. The need to reform our nation's health care system and ensure quality, comprehensive medical care for every American will take center stage. Also in the spotlight will be the President's budget (to be submitted early in February) and legislation addressing the crime epidemic. Earlier this month, Mel was in Washington to hear testimony from Administration officials and representatives from groups dedicated to reducing crime. Discussion focused on the impact of crime in minority and urban communities and on how best to prevent criminal behavior before it occurs.

Other major issues the House may consider this year include reform of the welfare system and worker training. An education bill providing federal funding for elementary and secondary schools will be considered and

the House is planning to take on highway and mass transportation issues as well. Congress may continue its efforts to overhaul its own rules and laws governing how federal campaigns are financed. A major international issue to be addressed will be the General Agreement on Tariffs and Trade (GATT), a worldwide trade pact that will affect nearly all U.S. industries in some way.

COMMITTEE OUTLOOK: In addition to continuing its work on crime legislation, the JUDICIARY COMMITTEE will take up telecommunications issues including the Administration's plans for an information "superhighway" and whether to allow local telephone companies into the long-distance telephone market. The committee will also look at claims made against the federal government by victims of radiation exposure. Laws covering the activities of lobbyists will be considered, as will an expired law providing for the appointment of an independent prosecutor in certain cases of alleged wrongdoing by high-level government officials.

The BANKING, FINANCE AND URBAN AFFAIRS COMMITTEE will focus on a major piece of legislation governing the nation's housing and homelessness programs. New regulations for the Community Reinvestment Act, a key law intended to ensure fair lending practices by banks, will also be on the committee's agenda. The committee will look closely at proposals to combine the many different government agencies which oversee banks, savings and loans and other types of financial institutions.

The POST OFFICE AND CIVIL SERVICE COMMITTEE will continue hearings on how health care reform will affect federal employees. The committee will also continue its oversight of the postal service, addressing such issues as efficiency and workplace violence.

Artistic Discovery

Each year, Members of the U.S. House of Representatives join together to recognize the creative spirit of American high school students in a nationwide art competition. "An Artistic Discovery" is the name of the 13th Annual Congressional Art Competition. Any student who lives in the 12th Congressional District is eligible to participate. Each high school may enter one piece of art and each student may submit only one work of art based upon specified guidelines. The winning entry will be displayed in Washington during the annual exhibition in a corridor of the U.S. Capitol. My office has sent brochures detailing the program to high schools in the 12th district. For further information, contact your local high school or one of my district offices.

Earned Income Tax Credit

Many low-income working families in the 12th district are eligible to receive up to \$2,287 under the 1993 Earned Income Tax Credit (EITC). Even more families are eligible in 1994. The EITC will also boost our economy by bringing an infusion of federal funds to low-income, working families.

The EITC is a tax credit for working couples and individuals with children. To qualify, families must have an earned income of less than \$23,050 in 1993 and have at least one child under age 19 living with them. This credit can be as much as \$2,287. The EITC is a refundable credit, which means families can benefit even if they do not owe federal income tax. For families that do owe taxes, the EITC can greatly reduce the amount.

To receive the EITC, families must file Form 1040A or Form 1040 and attach Schedule EIC. Schedule EIC can be obtained from the local IRS office or by calling 1-800-TAX-FORM (1-800-829-3676).

In 1994, the Earned Income Tax Credit is greatly expanded to include families with no children. About 52,000 families in the 12th district will be eligible for the EITC. Qualified families may be able to receive up to \$102 each month along with regular pay by filing Form W-5. Form W-5 can be obtained from the employer or by calling 1-800-TAX-FORM. Employers should take special care to inform their employees about the EITC.

Income Tax Assistance

Through the Volunteer Income Tax Assistance(VITA) program, trained volunteers located throughout each county will help citizens complete their income tax forms. In addition, the Elderly Tax Counseling(ETC) program provides assistance to older citizens filing their income taxes. For a listing of the VITA and ETC sites in your county, please contact one of my district offices.

Senior Citizen Intern Program

The Congressional Senior Citizen Intern Program is an opportunity for senior citizens to participate in a week-long internship in the nation's capital. Interns will take part in a series of seminars, workshops, and on-site study visits designed to expose them to the people and processes involved in the development of public policy.

The program is scheduled for May 14-21, 1994. The cost of \$908 covers in-town transportation, meals, and lodging. Interns must provide their own transportation to Washington. To be eligible an applicant must be at least 60 years old and in good health (the internship will involve a large amount of walking). Please contact one of my district offices if you live in the 12th District and would like to receive application information.

Academy Nominations

I am pleased to announce that I have made Congressional Nominations of the following students to the U.S. Service Academies:

- January B. Pulliam, Rowan County,
Air Force Academy
- Daniel Christopher Easley, Durham County, West Point
- June Alisha Cruse, Rowan County, Naval Academy
- Arvie LaShawnte Polk, Mecklenburg County,
Naval Academy

AmeriCorps

The National and Community Service Trust Act of 1993 created a national service program called AmeriCorps to encourage community service while helping volunteers pay for higher education. AmeriCorps will employ 20,000 high school graduates, college students, and college graduates for one to two years starting next September. Potential jobs areas include teaching, low-income housing construction, environmental conservation and many more. Participants will earn the minimum wage, or \$7,425 per year, health benefits, child care benefits (if needed), and \$4,725 in college or vocational school tuition or loan forgiveness.

Local governments and nonprofit service groups will be selected to provide the service opportunities for AmeriCorps. Although Federal regulations and grant guidelines will not be finalized until Spring of 1994, organizations planning to submit proposals should be aware of the upcoming opportunities.

Approximately \$51 million will be allocated by the Corporation for National and Community Service to states that submit plans approved by the Corporation according to a population-based formula. The North Carolina State Commission on Community and National Service, appointed by Governor Hunt, will choose local

programs that will compose North Carolina's plan. The State Commission will hold regional briefings in late February and March that will detail the application and selection process. To receive more information regarding these hearings as it becomes available, call 1-800-443-3961.

In addition, approximately \$48 million will be allocated directly by the Corporation for National and Community Service. National nonprofit and multi-state programs are invited to apply directly to the Corporation.

For more information about AmeriCorps write to the Corporation for National and Community Service, 1100 Vermont Avenue, NW, Washington, DC 20525 or call 1-800-942-2677. My office will provide more detailed information as it becomes available.

Marketplace '94

Mel and several other members of the North Carolina delegation are co-sponsors of Marketplace '94: Procurement Opportunities for Small Businesses. Marketplace '94 is designed to bring sellers from small businesses together with buyers from the Federal Government and large prime contractors. Representatives from small businesses may circulate through the buyers' booths to directly market their goods and services.

In addition to providing a setting to make contacts, Marketplace '94 offers an excellent opportunity to learn about the federal procurement process. A series of seminars will be conducted by government officials and National Contract Management Association members. Seminar topics include the following: "An Introduction to Procurement," "Legislative Update," "Proposal Writing," and "Marketing to MWR and PXs."

In the past, more than 500 attendees and 60 booth sponsors have participated in the conference.

The conference will be held Tuesday, April 5, 1994 at the Sheraton Imperial in Research Triangle Park, NC. There is an attendee fee of \$45. The booth fee for prime contractors is \$175.00. To receive an application, contact one of my district offices.

Mel's Schedule

Mel's schedule includes the following commitments confirmed at press time:

- January 31, Policy and Practice for Community Development Financial Institutions sponsored by Center for Community Self Help
- February 4, Keynote address, 7th Congressional District Black Caucus Meeting, Bolivia, NC
- February 8, 10:00AM Subcommittee on Consumer Credit and Insurance hearing to examine proposed Community Reinvestment Act regulations
- February 17, 7:00PM League of Women Voters Health Care Forum with Mel and Congressman McMillan, Government Center, 600 E. Fourth Street, Charlotte
- February 18, Dedication of Durham Housing Authority Senior Citizen Housing Complex, Durham
- February 24, Triad Chambers of Commerce panel discussion with Mel and Representatives Valentine and Price, Washington, DC

Fixed Offices

The following offices are open daily from 9:00AM to 5:00PM:

- 1232 Longworth HOB, Washington D.C. 20515, (202) 225-1510
- 214 N. Church Street, Suite 130, Charlotte, NC 28202, (704) 344-9950
- 301 S. Greene Street, Suite 210, Greensboro, NC 27402, (910) 379-9403

- 315 E. Chapel Hill Street, Suite 202, Durham, NC 27701, (919) 688-3004

In addition, the Winston-Salem office at 2301 Patterson Avenue is open on Tuesdays from 9:00AM to 4:30PM.

Satellite Office Schedule

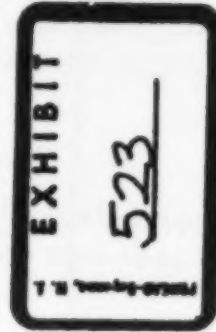
In order to provide congressional services to all constituents in the 12th district, the mobile office aide will continue to maintain regular office hours in municipal offices throughout the district. The satellite office schedule for December includes:

- February 1, 9:00AM-12:00PM, Salisbury City Hall, Room 202, 132 N. Main Street, Salisbury
- February 1, 1:00PM-4:00PM, Spencer City Hall, Office of the Mayor, 600 S. Salisbury Street, Spencer
- February 2, 9:00AM-12:00PM, Lexington City Hall, Council Chambers, 28 W. Center Street, Lexington
- February 2, 1:00PM-4:00PM, Thomasville City Hall, Conference Room, 10 Salem Street, Thomasville
- February 3, 9:00AM-12:00PM, High Point City Hall, Conference Room 5, 3rd Floor, 211 S. Hamilton Street, High Point
- February 3, 1:00PM-4:00PM, Jamestown City Hall, Council Chambers, 301 E. Main Street, Jamestown
- February 4, 9:00AM-12:00PM, Burlington City Hall, Council Chambers, 425 S. Lexington Street, Burlington
- February 4, 1:00PM-4:00PM, Haw River City Hall, Council Chambers, 403 E. Main Street, Haw River
- February 7, 9:00AM-12:00PM, Statesville City Hall, 2nd floor, 301 S. Center Street, Statesville
- February 7, 1:00PM-4:00PM, Mooresville City Hall, Municipal Court Room, 413 N. Main Street, Mooresville
- February 8, 9:00AM-12:00PM, Gastonia City Hall, Office of the Mayor, 181 South Street, Gastonia

JA-673

Defendant-Intervenors' Exhibit 523
POSTCARD ADDRESSED TO CLIFFORD R. McNEELY
[front]

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE PAID
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PERMIT NO. 541



P.O. Box 12905
Raleigh, N.C. 27605

ADDRESS CORRECTION REQUESTED

27605

119 00052

CLIFFORD R. McNEELY
302 SEAMAN DR
CHARLOTTE, NC 28217

Voter Registration Bulletin

If you moved from your old precinct over 30 days ago, contact the County Board Of Elections for instructions for voting on Election day. U.S.

When you enter the voting enclosure, you will be asked to state your name, residence, and period of residence in that precinct. You must have lived in that precinct for at least the previous 30 days, or you will not be allowed to vote.

It is a Federal crime, punishable by up to five years in jail, to knowingly give false information about your name, residence, or period of residence to an Election Official.

EXCERPTS FROM DEPOSITION OF GERRY F. COHEN

November 12, 1993

* * * *

[178] Q. Is it fair to say that the principal reason for [179] the construction of District 1 in this configuration was to create one of two majority minority districts in North Carolina?

(Witness and counsel confer.)

A. I would say that that was the principal reason for drawing this district, yes. I have testified also that there were other reasons as well.

* * * *

[328] Q. When you received the letter, was your interpretation at that point that the Justice Department would not grant preclearance unless two majority minority districts were created?

A. Yes.

[329] Q. And by majority minority districts, did you construe that as meaning districts with a sufficient majority—say about 55, 56 percent of the registered voters—in order to take account of voting patterns and that type thing?

A. Well, I think I testified that 56 to 50 percent (sic) was total population. I think I had said that voter registration about 53 or 54 percent.

Q. So you concluded that two districts of that sort had to be created?

A. From reading the letter, yes.

* * * *

EXCERPTS FROM DEPOSITION RUTH AGNES OLSON SHAW

October 27, 1993

* * * *

[7] A. In Durham, North Carolina, 1210 Anderson Street.

Q. How long have you resided at Anderson Street?

A. Since 1958, 35 years.

Q. Who is your congressman?

A. Mel Watt.

Q. Then you reside within the 12th Congressional District?

A. I do.

Q. Have you had any contact with Mr. Watt or his office since he was elected?

A. No, I haven't.

Q. Have you had any contact with any congressperson in the last year or year and a half?

A. No, I have not.

Q. Have you had any contact with the staff of any congressperson in the last year?

A. I have not.

Q. Were you active in Mr. Watt's political campaign?

[8] A. No.

Q. Have you ever been active in any political campaign?

A. Oh, yes. Yes, I have.

Q. Have you ever been active in the political campaign of any candidate for Congress?

A. I have been active as a contributor. And one year, I think—no, he was running for governor. No.

Q. So you have been——

A. (interposing) Excuse me—yes, Nick Galifianakis' campaign years ago.

Q. So you have contributed to candidates for Congress in the past?

A. Yes, I have.

Q. And you recall, as I understand it, in particular that you worked with Nick Galifianakis when he was a candidate for Congress?

A. Yes, I did.

Did that work include political campaigning in addition to contributions, working in his campaign in some respect or——

A. (interposing) No, it was more like licking stamps and sending out envelopes.

Q. Can you help me with when Nick Galifianakis first ran for Congress? I don't recall. Do you recall?

[9] A. It was in the '60s. I don't know the date.

Q. Have you been active in political campaigns other than campaigns for Congress?

A. Yes, Terry Sanford's for Governor, Richardson Pryor for Governor, local candidates. Let's see. My activity in partisan politics varied because if I had a job with the League of Women Voters, who are nonpartisan, I wasn't in it. When I was a registrar and later on the Board of Elections I was nonpartisan. So at those times, I did not participate in any partisan elections.

Q. Have you ever participated in the campaign of any black person for political office?

A. No, only in general ways like taking people to the—black people to the polls to vote.

Q. Are you a registered Democrat?

A. Yes.

Q. Have you always been a registered Democrat?

A. I have.

Q. Did you vote in the last congressional election?

A. I did.

Q. Did you vote for Mel Watt?

A. I did.

Q. You did or didn't?

A. I did.

Q. Prior to the most redistricting of the [10] congressional districts, what district did you reside in?

A. 12th—I mean, no, the 2nd.

Q. And who was your member of Congress at that time?

A. Tim Valentine.

Q. At any point did you request assistance of any type from Congressman Valentine's office?

A. I did not.

Q. And I assume that that would include no—well, let me put it this way: then you had no contacts with Congressman Valentine or his staff?

A. That is correct.

Q. Ms. Shaw, did you attend any public hearing held by the North Carolina General Assembly at any time regarding the proposed congressional redistricting plan?

A. I did not.

Q. At any time did you attend any session of the legislature at which the legislature was considering congressional redistricting?

A. I did not.

Q. Did you attend any committee meetings?

A. I did not.

Q. At any point did you have any contact with any member of the North Carolina legislature—

A. (Interposing) No.

Q. —regarding redistricting?

[11] A. No.

Q. At any point did you write any letters to any member of the North Carolina General Assembly—

A. (Interposing) No.

Q. —regarding redistricting?

A. I did not.

* * * *

[19] Q. Ms. Shaw, do you know of any reason that Representative Watt cannot represent your interest as a white citizen?

A. He can represent me when I agree with him. If we disagreed on a point, why would my opinion make any difference? The district has been set up for a certain group which I am not a member of. And if he wants to be re-elected, he is going to vote according to the wishes of that group. I would think that the majority of the time, yes, he would represent me, but only when there wasn't something that we [20] disagreed on.

Q. Well, let me ask you this, Ms. Shaw: how then does Representative Watt differ from any other elected public official?

A. Because they look at their district and they see who is in it and who is going to support them. He wouldn't care if I supported him or not. I think that the African Americans in the other ten districts may be shunted aside also because they wouldn't have a numerous number to make enough difference in an election. So they are just as disenfranchised as I am.

Q. Is it your testimony that you are disenfranchised because your representative in Congress is a black citizen?

A. No, because he is the representative of a district that was made for a black citizen. If he was a representative in my district that had not been set aside for minorities, he would then be my representative.

Q. What facts do you rely upon in making the statement the district was set aside for minorities?

A. From what I understand, the United States government, the Justice Department, said that they had to have two minority districts. And when the one was made, that wasn't enough, so they created the second one, which was the 12th District.

Q. Is that the only fact you rely upon in making the [21] statement that this district was set aside for minorities?

A. The fact that I read in the paper, yes, that it was set aside for minorities.

Q. Is there any other fact upon which you rely in making the statement that this district was set aside for minorities other than the U. S. Department of Justice actions?

A. The fact that the result was that there are more minorities in the district.

Q. Do you know the percentage of minority population within the 12th District?

A. No.

Q. Do you know the percentage of minority persons of voting age in the 12th District?

A. I do not, but I saw some figures in the paper that were something like 52 to 48 percent, something like that. And I may be very wrong on that. My memory may be wrong.

* * * *

[36] Q. Did Tim Valentine ever cast any vote with which you disagreed?

[37] A. Many.

Q. Were you as a consequence of the view that he was unable to represent you?

A. No, because I could discuss with him. If I saw him, I said, "I didn't like your vote on that." I could call in and protest.

Q. To your knowledge has Mel Watt cast any vote with which you disagree?

A. Not that I remember, but I am not sure. I haven't seen his complete voting record. I don't know.

Q. If he were [to] do so, would it be possible for you to contact his office?

A. It would be possible for me to.

Mr. Speas: I don't think I have any other questions.

The Witness: May I say something?

By Mr. Speas:

Q. Certainly.

A. I would very willingly vote for Mr. Watt at any time. I am sure that he represents me better than others.

It is the fact—it is the fact that if we don't agree that I would have no influence.

Q. Your concern is that the approximately 48 percent of the voters in the 12th District who are white have no influence on Mr. Watt?

[38] A. Very little.

Q. On what factual basis do you conclude that the 48 percent of the white voters in the 12th District have no influence on Mr. Watt?

A. Because if the same proportion of blacks and whites turned out to the polls, that 52 percent—the percentage of that 52 percent are the people who are going to put him in office. And since that district was made specifically for him, the likelihood would be very great that he would be elected again.

* * * *

[41] Q. You testified also that if you disagreed with him, you could call him on the phone and you could talk to him; is that correct?

[42] A. I could talk to his office.

Q. But you were——

A. (interposing) I am not sure I could talk to him.

Q. But you also testified that you never in fact did that?

A. Exactly.

Q. Could you describe the boundaries of the 2nd District in 1980?

A. No.

Q. What state legislative district are you a resident of, state house of representatives?

Mr. Everett: I am going to object to that question. If you mean single member, it is a multi-member district. I don't know what you are—

Ms. Cunningham: (interposing) I don't mean. I am just asking her what the boundaries—whether she knows what the boundaries are and whether she can describe them.

The Witness: No, because they have changed a lot in the last few years. At one point Durham was made up of three districts. And I am just not sure what the district is now.

By Ms. Cunningham:

Q. Were you aware in the '80s what the district was?

A. Yes.

Q. What were the boundaries in the district then?

[43] A. I don't know. I would have to see the map of Durham.

Q. Do you know what state senate district you are a resident of?

A. No.

Q. Did you know what the state senate district was in the '80s?

A. When I saw the precinct maps and the maps of Durham, I would.

Q. But not just offhand?

A. No.

Q. You couldn't just say what neighborhoods it comprised or what areas of the city?

A. I couldn't say.

Q. What about county commission? Do you know what county commission district you are a resident of?

A. They aren't named. It is a general election of the whole county.

Q. I see. The county commission is elected at large?

A. Exactly.

Q. What about city council? Is the city council elected at large?

A. Well, yes, it is elected at large, but they are representatives of wards.

Q. So in other words—

[44] A. (interposing) Six of them.

Q. Let me finish my question just so you know what I am asking you. The representative must live within a certain area, but the entire city votes on the representative?

A. Yes.

Q. Is that how it works?

A. Yes.

Q. And that is in Durham. Do you know what school board you are, what—are your school boards elected by district?

A. Yes.

Q. Do you know what school board you are a resident of—school board district?

A. No.

Q. You don't know the boundaries?

A. No.

Q. You don't know what neighborhoods comprise it?

A. No.

JA-685

Q. For any of the districts that I have just named, do you know what the racial percentage of the district is?

A. Of what district? Say it again, please.

Q. I will make it more simple. Do you know what the racial percentage of the general assembly district that you live in is?

A. I do not know.

* * * *

EXCERPTS FROM DEPOSITION OF MELVIN G. SHIMM

October 27, 1993

. . . .

[6] By Mr. Speas:

Q. State your name for the record, please.

A. Excuse me?

Q. State your name for the record, please.

A. Melvin G. Shimm.

Q. And you are a professor at Duke University Law School?

A. That is right.

Q. How long have you served on the faculty of Duke Law School?

A. 40 years.

Q. What are your present teaching responsibilities?

A. I teach largely in the commercial law area, bankruptcy, and I teach a seminar in medical, legal and ethical problems.

Q. What is your current home address?

A. 3429 Wrightwood Avenue—that is one word, Wrightwood—Durham, 27706-5823.

Q. How long have you resided there?

[7] A. Since 1969, which would be 34 years.

Q. Which congressional district do you reside in?

A. The 12th.

Q. Do you know who your congressman is?

A. Yes.

JA-687

Q. Have you had any contact with his office?

A. No.

Q. Which district did you reside in before the present redistricting plan was established?

A. The 2nd.

Q. Do you know who your congressman was then?

A. Yes, Tim Valentine.

Q. Did you have any contact with Congressman Valentine's office?

A. Yes, I did.

* * * *

EXCERPTS FROM DEPOSITION OF JOHN D. MERRITT

December 22, 1993

. . . .

[21] Q. Then what transpired, and did you play a part in developing some alternative?

A. Yes, that is correct. We met with an organization called the National Committee for an Effective Congress, NCEC, and drafted some sample plans that could be proposed to the legislature that would accomplish a two minority member district.

Q. Who and what is this NCEC?

A. It is a national organization that is a political group that mainly supports Democratic members of Congress and the sustaining of a Democratic majority in the Congress.

. . . .

Q. With respect to technology, to what extent does that organization have computer facilities that might be useful in drawing a plan?

A. Very useful, very high quality individuals who operate very high technologically significant systems. —

. . . .

[22] Q. What were some of the plans that you considered? Can you just sort of take us through what took place with the NCEC?

A. I think the first objective was you had to see whether there were enough voting age population minority individuals in the state of North Carolina for it to be possible to create two minority districts, and that in itself is not an easy task because minorities in North Carolina do not all live together in one or two neighborhoods.

Q. They are pretty much dispersed?

A. Very dispersed across the country. And you know, one could have individually by household tried to identify all the blacks and move them into a district, but that would have been foolish and there had been no commonality of interests between the districts that would be drawn in that regard.

So by looking at where the population centers were and then—obviously Charlotte had a large population base, Durham had a large population base, Wilmington has a significant, Fayetteville. Then out of using the beginning position, because drawing one was no problem obviously, because the legislature had already done that, you try to start putting together options that would possibly create two minority districts.

Q. When you were putting together options, did that [23] take the form of actually having plans drawn out and looking at them, that type thing?

A. More done on a computer terminal.

Q. When this was being done, were you present during much of that?

A. Correct.

Q. Now, with respect to the process as it developed, how did you evaluate the different plans that were being drawn out on the computer?

A. Through the miracle of technology and a spreadsheet, every change you made—every change that was made in any line, every precinct that was moved, would instantly give the Democratic performance index the last vote for the governor and the president and the senator in each one of those jurisdictions all the way down to the smallest political entity, including all the way down to the precinct level—not quite to the numeration district census block level, but at least to the precinct level.

And to the extent that they matched up with smaller geographic units of the census, that would be consistent.

Q. Now, did you have the racial—was the racial composition also—

A. (Interposing) Very similar system to the one the legislature used for generating its public data base that was used by individuals wishing to comment on the plans that the [24] state put forward.

. . . .

Q. As these plans were evolved, who was present from Capitol Hill—that is, either staffs and congressmen, other than yourself?

A. Mr. McCuen, McCuen representing Mr. Hefner, Mr. Conti representing Mr. Price, Mr. Nagy representing Mr. Valentine were all in and out over this weekend that this work was being kind of flight tested to see if we could come up with something.

. . . .

Q. Now, with respect to the demographics like income, family structure, things of that sort, was that sort of material available to you in the drawing process, or do you remember that?

A. This was two years ago and you know, there have [25] been four iterations of the census data base, STS I, II, III, and IV, I think, has just come out this week. I don't believe that the information on household income other than at the state level was available at the time we were doing this.

Q. Now, you looked—would it be fair to say that you looked at any number of different alternatives in moving different things around?

A. Correct.

Q. And you finally came up with a proposal; is that correct?

A. Well, I had some amount of help in this, too, as during the process immediately prior to doing this, an individual member of the legislature gave Mr. Rose a call and said there was a plan floating around the legislature that had supposedly been to the Justice Department and had been received with some favorability down there.

And this plan became known as Optima II or Optima I, which is a plan that supposedly had originated with Mr. David Balmer, a member of the legislature from—a Republican member of the legislature.

* * * *

[72] Q. Can you tell me what the Democratic performance index is? You spoke of that as a number that appeared on your screen, I guess while you were drawing this plan. What does that mean?

A. A simple description would be that as you amalgamate different races and look at gubernatorial, lieutenant gubernatorial, attorney general, senate, presidential races in a given precinct over a given period of time that a different candidate for Congress who either performs at a negative to an average index or a positive to an average index should have a Democratic performance index of "X."

So you have to look at the amalgamation of all the numbers and then does the congressman in that region generally tend to perform in the high end of that or the low end of that and it gives you some indicator. It is a very imprecise science.

Q. And yet it is something that you referred to while you were making up your plans?

A. Correct.

* * * *

[73] Q. And if I understood you correctly, you told Judge Everett that when you put this plan together you did not have access, in fact no one had access, to demographic information like household income?

A. No, sir.

Q. But you did have access to race, age, voter registration, and this Democratic performance index?

A. Correct.

. . . .

EXCERPTS FROM DEPOSITION OF DENNIS JAY WINNER

January 11, 1994

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[6] Q. Senator Winner, would you state your—well, first, by way of explanation, I think you are already aware of this, I am a plaintiff and attorney for the plaintiffs. And this is a deposition, and I will be asking questions. If they are not clear, please let me know and I will try to clarify them.

And with that preface, let me just start off by asking you your name, residence, occupation.

A. My name is Dennis Jay Winner. I am an attorney. My residence is 117 Sondley Place, Asheville, North Carolina. I hope that answers everything.

Q. How long have you been an attorney, and you might just give us—

A. (Interposing) I was licensed to practice law in the fall of 1966 and have practiced ever since then except for four years and eight months when I was a judge.

Q. That was in the 1970s?

A. That was from December 1970 until July 1975.

Q. And how long have you served in the state General [7] Assembly?

A. Since 1983.

Q. Has that always been as a senator, or were you in the other house as well?

A. No, that was always as a senator.

Q. When you began serving, had the redistricting after the 1980 census already been completed?

A. It had. Well, the initial redistricting had. There was—the *Gingles* decision caused some more redistricting

to be done to the General Assembly after I was there, though I took no part in it other than to vote for the bill. It was while I was a freshman senator. But the congressional redistricting, which I understand this lawsuit is about, had been completed before I was there.

Q. Did there come a time when you became aware that a new round of redistricting was in prospect?

A. Well, I guess I always knew that.

Q. And you learned that North Carolina would have an additional congressman?

A. Yes.

Q. Were you assigned any special role with respect to redistricting?

A. I was appointed chairman of the redistricting committee in the Senate, which was in charge of all of the redistricting from the Senate side of it.

[8] Q. Was there any co-chair or were you the sole—

A. (interposing) I was the sole chair.

. . . .

[11] Sometime—the first thing I can recall doing was that I thought that we ought to try to get the views of the various congressmen about their own districts. And so I went to Washington, I believe with Russell Walker. I really can't remember for sure. But that was sometime in the early spring, probably in late March or early April, and met with as many of them who wanted to meet with me. That was not all of them, but it was almost all of them. In fact, I think I met with all of them except for Congressman Taylor and Congressman Jones.

The next thing I recall after that—and we also [12] had these public hearings about redistricting in general in various parts of the state. The next thing I remember

after that is that I drew—this, again, was before anything was on a computer—using the census book, sort of a sketch of an idea of a plan. And in fact, I must have done that before I went to Washington because I can remember showing that early sketch to some of the congressmen and seeing what they thought of it. They were pretty much critical of it, as I recall.

Q. Did you meet with them en masse or just individually or how did—do you have any recollection in that regard?

A. I met with the Democrats separate from the Republicans. I remember meeting with the three Republicans and one staff member from Congressman Taylor together. And I think we met with the Democrats together, but I am not totally sure of that. I believe we did. I have some faint memory. The meeting was not very—the meetings were not very productive, so they are not very firm in my mind.

. . . .

[13] Let me go back a minute, because I think that something needs to be explained. One of the things I learned about redistricting in general from a chairman's point of view is that at no time in politics do I know of are you faced with work that requires a greater ability to achieve compromise than you do with redistricting, because you have a lot of competing forces.

And for instance, with the Senate plan, which I think I had a lot more to do with than I did with the [14] congressional plan—with the Senate plan, even though I am the one who drew it and got it through all the way, I doubt there is a district in the whole plan that I would draw if it were just me deciding it the way they ended up. It was—the whole way you do this is to negotiate compromise, put ideas—I felt like a mediator most of the time between competing interests.

And the same was true with the congressional plan except that you had the additional—it was easier in a way because the people were not interested as much as they were in their own seats. But also it was more difficult in a way because it wasn't just one house deciding this. It was two houses.

So when we agreed to the Congressional Base 1, I was pretty confident that I could get that through the Senate. Then the House committee met and rejected it and came back with something else. And from then on until the end—until we finally passed something, it was just a question of trying to negotiate things that different competing sides could live with.

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[16] Q. Okay. Now, that basically takes us up through the first plan, then. You said that after the initial plan, Congressional Plan 1, was not accepted by the House committee, there was a variety of plans and ultimately a single—a plan emerged with a single majority minority district. Then what happened after that? Can you tell us what took place?

A. Well, I recall sometime that fall going to Washington and meeting with the Justice Department, though I don't remember in that first meeting that we had with them—with some of the staff people—very much about the congressional plan. Most of it—most of what I was dealing with was the Senate plan.

And also in the fall I had two or three very lengthy conversations with some lady on that Justice Department staff whose name I have forgotten, but those [17] conversations were solely, as I recall it, about the Senate plan. I don't remember ever having a conversation with the Justice Department about the congressional plan until we went up there the day before they rejected it.

Shortly before that meeting, I got a call—I presume from Gerry Cohen, I am not absolutely certain of that, but from somebody—saying that the Justice Department wanted to meet with us again and could I go. And I arranged my law schedule so I could and went up there. At that meeting I think Speaker Blue was there and Leslie was there and Gerry Cohen was there and I believe Toby Fitch was there. I think he was the only House chairman there, if I remember correctly.

That meeting—I could not figure out the purpose of that meeting once we got into it, because it was very obvious to me—that was the first time I met John Dunne, or whatever his name is. And it was very obvious to me that Mr. Dunne had already made his mind up, and why he dragged us to Washington I don't know.

They talked about the Senate and the House plan—you know, out of an hour or two hour meeting maybe we spent five minutes on the legislative plans. Most of it had to do with the congressional plan. And Mr. Dunne did most of the talking—there was a little talking from the other staff, but did most of the talking, and most of it got down to sort of [18] that we ought to have a quota system with respect to minority seats. You had 22 percent blacks in this state. Therefore, you ought to have as close to that as you could have of congressional districts. That is really all I remember about it.

Q. Have you heard the phrase "if you can, you must" used with respect to the creation of majority minority districts or something—

A. (Interposing) Yes, I have heard it. Most of—the person who most used that phrase during this whole process that I can recall is Senator Leo Daughtry. Throughout the whole process, both in the Senate and the congressional redistricting, he was very interested in forming as many minority districts as he could create and then so-called minority interest districts and any

other way he could figure out to compact as many Democrats together as he could.

Q. With respect to Mr. Dunne's remarks, was it your view those would be consistent with an "if you can, you must" approach?

A. I don't remember him ever saying that, but he may well have.

Q. In substance, would it be—was his approach—

A. (interposing) I think his substance was really that you had—if you had 22 percent blacks in North Carolina, then you ought to have 22 percent minority congressional [19] seats. Whatever shape didn't matter.

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[21] After I got through—after we got through doing the Senate plan, and nobody ever thought of—even though I thought the Justice Department's ruling on the Senate plan was absurd, nobody—nobody that I know of was interested in [22] going and filing any lawsuit to get our original plan approved over that.

So we tried to come up with a plan that would comply with their objection, and that took some time because it did affect a lot of eastern North Carolina senators in coming up with a consensus on that. And that is where I was focused, and I got that done and then turned to the congressional plan.

After a lot of thought about this and talking to various lawyers with the legislature involved in it, I had come to the conclusion that we ought to go to court and expressed that on several occasions to Senator Barnes. But it was the—but I realized that it was going to take both houses to do that, like it takes both houses to make any decision down there, and that ultimately the leadership in both houses were going to have to decide it. Somewhere along the way, the decision was made

that we weren't going to go to court and we were going to try to comply with the plan.

At that time, I had at least two that I can recall and perhaps three conversations with Senator Barnes about resigning from being chairman of the committee. He was—he expressed, at least, to me that he was—that he had become convinced that the odds were so slim of us winning this in the District Court of the District of Columbia that he just felt like we had to comply. He didn't want to tie up the [23] State in litigation for several years over it.

Finally, partly out of loyalty to him and partly because I knew that if I took the other side in this and fought it that I was going to tear the General Assembly up and that we were going to be there for a long time and one of the things that was important was to try to make some kind of decision in time to have this election—that was a factor, trying not to put the election off—so I decided that I needed to go on and just do the best I could with the job I was given and put my personal views aside. And that is what I did.

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[24] The other two changes I made was, one, there got to be a controversy between Senate members who were big supporters of Congressman Valentine and with the House leadership on the 2nd—the line between the 2nd and the 4th [25] Congressional District, and I was able to work out a compromise of that. And then there was a controversy among the mountain Democrats over where the 11th and 10th Congressional lines should be, and I was able to work a compromise out of that.

And the only other thing I remember doing with that plan was that the House had—in their plan had taken 90 percent of Congressman Ballenger's home county away from him, which I thought was a ridiculous thing to do,

and I got that changed, so that all of Catawba County stayed—or all or most of it, I don't remember exactly—stayed with him and wasn't taken out of his district. That really is my best memory of it. And then I just led it through the floor. And that was the extent of my knowledge of this plan.

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[31] Q. "I think that the Bush administration has, for reasons which I will—will put reason on them later in this talk, has forced us to do things that the Voting Rights Act does not require and which are bad for the state but from which, on talking to the expert lawyers in the field, we [32] have no practical remedy."

Was that your view at the time?

A. That was my view.

Q. And it was your—when you spoke of the Bush administration, was that basically the Department of Justice and Mr. Dunne that you were referring to?

A. Well, as it appears later in the speech, I was convinced that it was not a civil rights decision that was made by the Justice Department, but a political one. And I presume that is why Mr. Dunne was put in that position, which I understand is a politically appointed position rather than a civil service type position.

Q. And basically what was that political decision, if you could summarize it?

A. Well, I believe that it was—that the decision was made—and I have no basis for this other than rumor and logic. I believe the decision was made that the Republicans could do better than our original plan if the state was forced to put in another minority district and that that was why the decision was made and that I still believe that, and I think it had that effect.

Q. You mean, the state was being required to have two majority minority districts because of some supposed political advantage on the part of those who were imposing the requirement?

[33] A. That was my view.

Q. But in any event, you did feel at all times—well, after the objection to preclearance was interposed, you believed at all times that the Justice Department was firm in requiring that there be two majority minority districts?

A. There wasn't any question about that.

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[37] Q. Do you have any opinion as to why the second district was created—the second majority minority district was created in the western part of the state instead of in the southeast?

A. Although I didn't make that decision, I do have an opinion, yes.

Q. And what is that opinion, sir?

A. In comparing the two, it is very clear to me that the district—that some configuration of an I-85 district and the district that we in fact adopted is more—though it is maybe more peculiar looking, it is clearly more compact than any drawing of a district in south central and southeast North Carolina for the following reasons. And I am comparing it to this idea of Charlotte to Wilmington type district.

One, there is clearly more of a community of interests in that most of the people in the district that we passed are urban, where you had a real mixture of urban and [38] rural in the district that was looked at from Charlotte to Wilmington.

Secondly, it is in driving time at least an hour shorter from Charlotte to Durham than it is from Charlotte to Wilmington. Thirdly, I think my sense of the demographics of the state are that there are distinctions between piedmont and rural eastern people, not just urban-rural distinctions, but just eastern-piedmont distinctions. And that district, of course, was—Wilmington to Charlotte is half east, half piedmont, where the district that we passed is all piedmont.

There are—that Charlotte to Wilmington district would be in five different media areas compared to three of Charlotte to Durham, therefore making it far more expensive to campaign in. Those are the reasons that come to the top of my head.

Q. Do you know whether or not protection of incumbents was another factor that spoke in favor of the I-85 district?

A. No, it clearly didn't because, although I didn't work on it, I was aware that one of the other senators and the staff had used a Charlotte to Wilmington district that was just—that protected incumbents just as well as the one that we passed.

Q. All right. I would like to ask you some questions about things that affected your decision personally to vote [39] for this plan as we now have it. At the time that you voted for the plan, did you think that two majority minority districts were necessary to comply with the requirements of Section 5 of Voting Rights Act?

A. No, although I am not—don't claim to be an expert on the Voting Rights Act, but my sense of what was intended—other than getting impediments of actual voting out of the way, but with respect to legislative and congressional districts—my sense of what was intended was that Congress correctly intended that legislatures should not submerge concentrations of minorities in multimember districts or fracture them in some way

when they had a natural majority of the population, and which probably was clear—was probably done throughout the south before that act was passed.

On the other hand, I don't think it was ever intended to take one little group here (indicating) and connect it by a road or a phone line or just area to some other little group there (indicating) in order to create majorities in which there were not concentrations of minorities. And that is why I don't think it was required. I don't think that—my personal view is that I don't think that the Voting Rights Act requires either—any minority congressional districts in this state.

Q. So I assume, then, that you don't think that this [40] was required in order to satisfy Section 2 of the Voting Rights Act either?

A. I do not—in my limited expertise, given the caveat that I gave you—I am not a civil rights law expert—I don't think it is what Congress intended.

Q. At the time did you feel that the passage of a plan with two majority minority districts was necessary to redress historical discrimination against minorities in this state?

A. Only if you could—only if you can create reasonably compact districts, which I don't think that can be done, although I would say that I think that the 12th District that was created is probably a lot more compact than the 1st District that was created.

Q. Why do you say that?

A. Because it is smaller, easier to get across, has more of a community of interest, is less irregular. I think the 1st District is far more irregular than the 12th District. You know, the 12th District has gotten all the heat because it is narrow. It is smaller than my congressional district was in the '80s plan or ever has been in my lifetime. That is why.

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[58] By Mr. Stein:

Q. I have a few, kind of some general questions to you as a legislator going to Raleigh from a district to engage in redistricting. You said that particularly your role in dealing with the Senate redistricting was one of the [59] hardest jobs you had had and that that there were all these competing interests. What sorts of interests were competing?

A. Well, of course, the biggest interest in the Senate plan and in the congressional plan were people trying to save their own skins, you know. Everybody wanted to have a safe district.

And if you—if you took and made one district safe, you made the next one more unsafe, and then—and nobody, and this includes me, wanted to bring in new territory. I mean, who wants to have to go campaign in some place you never campaigned before? It takes a lot of effort.

Then there were partisan interests and there were other—and there were interests of minorities in being able to enlarge their numbers in the General Assembly. That is really pretty much it.

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[71] Q. I think you said that you mediated the dispute as to where the line would go between the 4th and the 2nd?

A. Well, I was more than a mediator of that. I was sort of—and I do not remember all the detail of this, but let me just tell you what I remember about it. The House conception, if I recall correctly, included all or part of Franklin County nad [sic] the part of Johnston County that Congressman Valentine already—already represent-

ed, Johnston County being a divided county in the '80s redistricting, into Congressman Price's district.

There was clear resistance to that among some of the senators, without saying who, so I don't violate their immunity. So I proposed a plan where all of Franklin County, if I remember correctly, and the part of Johnston County that Congressman Valentine represented and some more of it would be in his district. And that got into dispute between me and one of the leaders of the House, without violating that person's immunity.

Under either version, both—I mean, you were going to end up with some split up counties that it suddenly—I remember I was driving back to Raleigh and it suddenly occurred to me there was a solution to this in which you would—which ought to be a compromise between the competing [72] interests of the two congressmen which would make the 4th District into a really compact, nice district. And I couldn't figure out why I hadn't thought of it before.

And I went and proposed it to whomever it was that this dispute was going on with, and within just a few hours they accepted that and that was the end of the dispute. That is what we ended up with. That is the line that is currently there.

Q. And originally the dispute was between folks in the House that were trying to protect what they perceived to be either their interest or Congressman Price's interest in the configuration of the 4th and senators who had some allegiance to Congressman Valentine?

A. I think that is a correct statement. There was also some part of it of senators, I think, who didn't want their county divided. Of course, you hit that in every kind of dispute there was over this.

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[75] Q. You testified earlier this morning that sometimes it is necessary to have noncompact districts, that in fact you have lived in one for some time. What other circumstances or what circumstances create the necessity for noncompact districts?

A. Well, of course, the biggest necessity is that there is not enough population to have a compact district. I mean, that is the case in my end of the state. You are going to have to—and it is the case in the northeast. I think you have to have very large, cumbersome geographical districts because there is no people there.

Q. And isn't it also so in your part of the state that that problem is compounded by the fact that it is mountainous and even more difficult to get from one place to another?

A. No question about it. My old district in the '80s when you had to go from Avery County, which was the eastern line, to Cherokee County is a minimum of a four hour drive. That is a very cumbersome district to—or it would be in my view to try to represent that.

